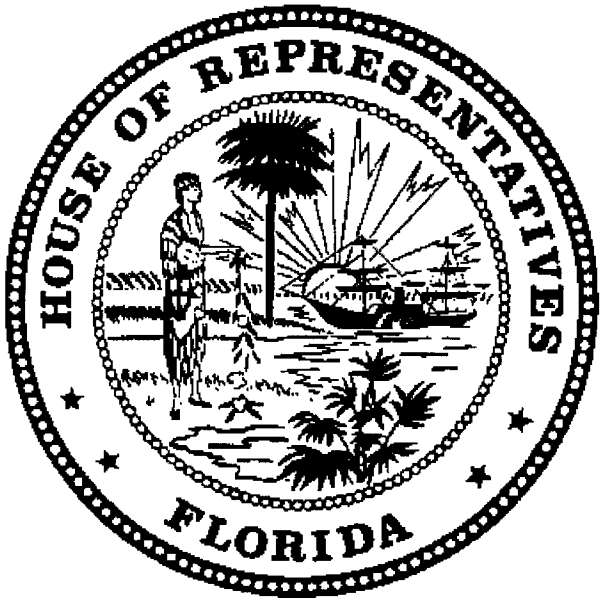

State Resources Council

Monday, April 10, 2006
4:00 PM
Reed Hall

Allan G. Bense
Speaker

Marty Bowen
Chair

Council Meeting Notice

HOUSE OF REPRESENTATIVES

Speaker Allan G. Bense

State Resources Council

Start Date and Time:	Monday, April 10, 2006 04:00 pm
End Date and Time:	Monday, April 10, 2006 06:00 pm
Location:	Reed Hall (102 HOB)
Duration:	2.00 hrs

Consideration of the following bill(s):

HB 637 Consumer Protection by Seiler
HB 889 CS Fran Reich Preserve by Machek
HB 1015 CS Agricultural Economic Development by Pickens
HB 1155 Contaminated Drycleaning Facilities by Evers
HB 7245 Oil and Gas Drilling by Economic Development, Trade & Banking Committee
HB 1153 CS Concealed Weapons by Coley
HB 1501 CS Agent Licensing by Berfield

NOTICE FINALIZED on 04/06/2006 16:17 by REARDON.BILLIE

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 637 Consumer Protection
SPONSOR(S): Seiler
TIED BILLS: None **IDEN./SIM. BILLS:** SB 202

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture Committee	9 Y, 0 N	Blanchette	Reese
2) Civil Justice Committee	6 Y, 0 N	Shaddock	Bond
3) Judiciary Appropriations Committee	4 Y, 0 N	Brazzell	DeBeaugrine
4) State Resources Council		Blanchette CB	Hamby JJO
5)			

SUMMARY ANALYSIS

The bill amends the Florida Deceptive and Unfair Trade Practices Act to clarify that the court may allow a court-appointed person such as a receiver to address wrongdoing by bringing an action in the name of and on behalf of a defendant, such as the corporation over which the receiver has been appointed.

This bill does not appear to have a fiscal impact on state or local government.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Current Law

The Florida Deceptive and Unfair Trade Practices Act (FDUTPA)[1] was enacted "[t]o protect the consuming public and legitimate business enterprises from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce."[2]

Businesses and individuals are afforded broad protection from unfair or deceptive acts or practices under the FDUTPA. The FDUTPA states a broad proscription that applies through civil enforcement across industries and business conduct generally in any medium. The FDUTPA, Part II of ch. 501, F.S., provides remedies and penalties for "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce..."[3]

Under the FDUTPA, the Attorney General or other enforcing authority may bring an action on behalf of a consumer[4] and seek the appointment of a receiver[5] or fiduciary to seek redress. A receiver only has the powers given to him or her by statute or by order of appointment.[6] Under most circumstances, it is the receiver's duty to safeguard the property in his or her custody and to protect the rights and interests of all claimants while still maintaining neutrality.[7] A receivership allows the court to accomplish "complete justice," with the goal of providing protection to the property at issue until the final disposition of the matter.[8] An appointment of a receiver is an equitable question and not a matter of right.[9] Typically, the appointment of a receiver is an ancillary remedy and can only be obtained in connection with some other action to obtain a specific relief.[10]

It is unclear whether under the FDUTPA a receiver or other court-appointed person has standing to bring a proceeding on behalf of defendants against a third party who may have an involvement in the wrongdoing.

Effect of Bill

The bill authorizes a court to permit actions in the name of and on behalf of the defendant enterprise. This would allow a receiver or other court-appointed person to address wrongdoing by filing suit on behalf of a defendant, such as a corporation over which the receiver has been appointed, against a third party who played some role in the alleged wrongdoing.

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[1] Sections 501.201-501.213, F.S.
[2] Section 501.202(2), F.S.
[3] Section 501.204, F.S.
[4] Section 501.207(1)(c), F.S.
[5] A "receiver" is defined as "[a] disinterested person appointed by a court, or by a corporation or other person, for the protection or collection of property that is the subject of diverse claims." Black's Law Dictionary 1275 (7th ed. 1999).
[6] 44 Fla. Jur. 2d Receivers s. 49 (2005).
[7] *Id.*
[8] 44 Fla. Jur. 2d Receivers s. 2 (2005).
[9] 44 Fla. Jur. 2d Receivers s. 3 (2005).
[10] *Id.*

The bill also amends ss. 501.203 and 501.204, F.S., to capture changes in federal law from 2001 to 2006.[11]

C. SECTION DIRECTORY:

Section 1. Amends s. 501.203, F.S., to change dates to capture changes in federal law up to July 1, 2006.

Section 2. Amends s. 501.204, F.S., to change dates to capture changes in federal law up to July 1, 2006.

Section 3. Amends s. 501.207, F.S., to broaden the powers of a receiver.

Section 4. Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill does not appear to require counties or municipalities to take an action requiring the expenditure of funds, reduce the authority that counties or municipalities have to raise revenue in the aggregate, nor reduce the percentage of state tax shared with counties or municipalities.

[11] To directly link the statute to the interpretation of the federal courts and the Federal Trade Commission would be an unlawful delegation of legislative power. Therefore, the dates in the statute must be periodically updated.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A.

A bill to be entitled

An act relating to consumer protection; amending ss. 501.203 and 501.204, F.S.; changing obsolete dates; reenacting and amending s. 501.207, F.S., relating to remedies of the enforcing authority under the Florida Deceptive and Unfair Trade Practices Act; providing that the court may order actions brought under that act on behalf of an enterprise; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) of section 501.203, Florida Statutes, is amended to read:

501.203 Definitions.--As used in this chapter, unless the context otherwise requires, the term:

(3) "Violation of this part" means any violation of this act or the rules adopted under this act and may be based upon any of the following as of July 1, 2006 ~~2001~~:

(a) Any rules promulgated pursuant to the Federal Trade Commission Act, 15 U.S.C. ss. 41 et seq.;

(b) The standards of unfairness and deception set forth and interpreted by the Federal Trade Commission or the federal courts;

(c) Any law, statute, rule, regulation, or ordinance which proscribes unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices.

Section 2. Subsection (2) of section 501.204, Florida Statutes, is amended to read:

501.204 Unlawful acts and practices.--

(2) It is the intent of the Legislature that, in construing subsection (1), due consideration and great weight shall be given to the interpretations of the Federal Trade Commission and the federal courts relating to s. 5(a)(1) of the Federal Trade Commission Act, 15 U.S.C. s. 45(a)(1) as of July 1, 2006 ~~2001~~.

Section 3. Subsection (1) of section 501.207, Florida Statutes, is reenacted, and subsection (3) of that section is amended to read:

501.207 Remedies of enforcing authority.--

(1) The enforcing authority may bring:

(a) An action to obtain a declaratory judgment that an act or practice violates this part.

(b) An action to enjoin any person who has violated, is violating, or is otherwise likely to violate, this part.

(c) An action on behalf of one or more consumers or governmental entities for the actual damages caused by an act or practice in violation of this part. However, damages are not recoverable under this section against a retailer who has in good faith engaged in the dissemination of claims of a manufacturer or wholesaler without actual knowledge that it violated this part.

(3) Upon motion of the enforcing authority or any interested party in any action brought under subsection (1), the court may make appropriate orders, including, but not limited to, appointment of a general or special magistrate or receiver or sequestration or freezing of assets, to reimburse consumers

or governmental entities found to have been damaged; to carry out a transaction in accordance with the reasonable expectations of consumers or governmental entities; to strike or limit the application of clauses of contracts to avoid an unconscionable result; to bring actions in the name of and on behalf of the defendant enterprise; to order any defendant to divest herself or himself of any interest in any enterprise, including real estate; to impose reasonable restrictions upon the future activities of any defendant to impede her or him from engaging in or establishing the same type of endeavor; to order the dissolution or reorganization of any enterprise; or to grant ~~legal, equitable, or~~ other appropriate relief. The court may assess the expenses of a general or special magistrate or receiver against a person who has violated, is violating, or is otherwise likely to violate this part. Any injunctive order, whether temporary or permanent, issued by the court shall be effective throughout the state unless otherwise provided in the order.

Section 4. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 889 CS Fran Reich Aquatic Preserve
SPONSOR(S): Machek
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Water & Natural Resources Committee	9 Y, 0 N, w/CS	Winker	Lotspeich
2) Agriculture & Environment Appropriations Committee	11 Y, 0 N	Dixon	Dixon
3) State Resources Council		Winker KW	Hamby
4)			
5)			

SUMMARY ANALYSIS

The bill designates the Site 1 Impoundment Project of the Comprehensive Everglades Restoration Plan sponsored by the South Florida Water Management District (SFWMD) as the Fran Reich Preserve. The bill directs the SFWMD to erect suitable markers designating the Fran Reich Preserve.

The bill has no fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

The bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

The Site 1 Impoundment Project is a joint project between the U.S. Army Corps of Engineers and the South Florida Water Management District as part of the Comprehensive Everglades Restoration Plan. The purpose of the project, which is located in Palm Beach County, is to supplement water deliveries to the Hillsboro Canal by capturing and storing excess water currently discharged to the Intracoastal Waterway. The supplemental water deliveries are intended to reduce the demands upon Lake Okeechobee.

As part of the project, an impoundment pool will also provide groundwater recharge, reduce seepage from adjacent natural areas, and prevent saltwater intrusion by releasing impounded water back into the Hillsboro Canal when conditions dictate. Some measure of flood protection may also be provided by the project along with water quality improvements. The project includes canal and structure relocations, canal conveyance improvements, water control structures, and an aboveground impoundment with a total storage capacity of 13,280 acre-feet located in the Hillsboro Canal Basin in southern Palm Beach County.

Fran Reich was born in New York City in 1914. After graduating from Queens College, Ms. Reich worked in a law office and married her husband Allan. She raised a family and continued to work and be active in numerous educational and civic group issues. In 1978, Ms. Reich and her husband moved to Boca Raton, Florida where she founded the West Boca Community Council in 1980. Ms. Reich served as the Council's President and Board Chair. Ms. Reich served on many local and county advisory committees including the Infrastructure Task Force, Traffic Performance Standards, Ethics Committee, and the Land Use Advisory Board.

Ms. Reich's many accomplishments include:

- Bringing a new middle school to West Boca;
- Leading the fight against a West Boca landfill and incinerator by convincing the County that there was no need for such facilities;
- Defeating a proposed airport in West Boca;
- Assisting in the establishment of a West Boca Medical Center;
- Advocating for parks, libraries, schools, post offices, fire stations, and youth activity centers in West Boca.

With Ms. Reich's leadership, the West Boca Community Council fought the establishment by the County of a landfill on the southeastern edge of the Loxahachee Wildlife Refuge and what has become the Site 1 Impoundment Project of the Comprehensive Everglades Restoration Plan.

Ms. Reich died in February, 2005.

C. SECTION DIRECTORY:

Section 1: Designates the Site 1 Impoundment Project of the Comprehensive Everglades Restoration Plan as the Fran Reich Preserve; directs the South Florida Water Management District to erect suitable markers.

Section 2: Provides that the act becomes effective on July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not appear to require cities or counties to spend funds or take actions requiring the expenditure of funds. Nor does the bill reduce the authority that cities and counties have to raise revenues in the aggregate or reduce the percentage of a state tax shared with cities or counties.

2. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

According to Department of Environmental Protection staff, designating the Site 1 Project water body as an aquatic preserve would place numerous restrictions upon the water body and would make it difficult to use it for the intended purpose of the Site 1 Project, which is essentially a water holding pond or an impoundment area. Staff recommends that the phrase "aquatic preserve" be removed from the bill and another appropriate designation be used.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 15, 2006, the Water and Natural Resources Committee adopted the bill with an amendment which removed the word "aquatic" from the bill.

CHAMBER ACTION

The Water & Natural Resources Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to the Fran Reich Preserve; designating the Site 1 Impoundment project of the Comprehensive Everglades Restoration Plan sponsored by the South Florida Water Management District as the Fran Reich Preserve; directing the South Florida Water Management District to erect suitable markers; providing an effective date.

WHEREAS, Fran Reich founded the West Boca Community Council and proudly served on the council as President, Chairman of the Board, and Chairman Emeritus, and

WHEREAS, Fran Reich was a dedicated activist who worked diligently to protect the communities of South Florida and to improve the lives of others, and

WHEREAS, Fran Reich successfully led the victory that protected and preserved the Loxahatchee Wildlife Refuge, and

WHEREAS, such effort and commitment generated a legacy of community awareness and involvement, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Fran Reich Preserve designated; South Florida Water Management District to erect suitable markers.--

(1) The Site 1 Impoundment project of the Comprehensive Everglades Restoration Plan sponsored by the South Florida Water Management District is designated the "Fran Reich Preserve."

(2) The South Florida Water Management District is directed to erect suitable markers designating the Fran Reich Preserve as described in subsection (1).

Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1015 CS Agricultural Economic Development
SPONSOR(S): Pickens and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1880

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture Committee	9 Y, 0 N, w/CS	Kaiser	Reese
2) Agriculture & Environment Appropriations Committee	11 Y, 0 N, w/CS	Davis	Dixon
3) State Resources Council		Kaiser	Hamby
4)			
5)			

SUMMARY ANALYSIS

HB 1015 reduces the notice period from 180 days to 90 days for property classified as agricultural under the Bert Harris Private Property Rights Protection Act.

The bill establishes an "agricultural enclave" designation and authorizes the landowners of such to apply for a comprehensive plan amendment (CPA) that includes land uses and intensities of use consistent with uses and intensities of use of surrounding industrial, commercial, or residential uses. The bill stipulates the property must meet Greenbelt criteria, have been in agricultural production for the past five years and meet additional criteria. An agricultural enclave may not exceed 2,560 acres, unless the property has existing or authorized residential development that will result in a build out density of at least 1,000 residents per square mile, in which case it should be determined urban and may not exceed 5,120 acres. The bill exempts the CPA from certain rules of the Department of Community Affairs (DCA) relating to urban sprawl.

The bill provides for good faith negotiations between the local government and landowner, with certain criteria to be met regarding the negotiations. Upon completion of negotiations, regardless of the outcome, the CPA must be transmitted to the DCA for review at the first available transmittal cycle. The bill forbids the DCA from using certain rules relating to urban sprawl as a factor in determining compliance of a CPA. If the landowner fails to negotiate in good faith, all DCA rules relating to urban sprawl apply to the CPA. The bill states, "Nothing relating to amendments to local comprehensive plans in regards to agricultural enclaves shall preempt or replace any protection currently existing for any property located within the boundaries of the Wekiva Study Area or the Everglades Protection Area."

The bill provides economic protection to an agricultural lessee when property for which an agricultural lease exists is purchased by the state or an agency of the state. The bill requires the purchasing agency to allow the lease to remain in full force for the remainder of the lease term. Where consistent with the purposes for which the property was acquired, the purchasing agency must make reasonable efforts to keep lands in agricultural production which are in agricultural production at the time of the purchase.

The bill establishes in law that agricultural self-supplied water users have limitations on their ability to develop alternative water supplies. Furthermore, the bill requires water management districts to notify agricultural applicants for consumptive use permits of the right to apply for permits valid for 20 years.

By July 1, 2007, the bill requires each water management district to enter into a memorandum of agreement (MOA) with the Department of Agriculture and Consumer Services (DACS) to determine whether an existing or proposed activity qualifies for the agricultural wetlands exemptions set forth in law.

The bill does not appear to have a fiscal impact requiring new state expenditures. The effective date of this legislation is upon becoming law.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty: The bill creates a process for owners of agricultural enclaves to request comprehensive plan amendments allowing land uses and intensities of use consistent with uses and intensities of use of surrounding industrial, commercial, or residential uses. The bill provides economic protection to an agricultural lessee when property for which an agricultural lease exists is purchased by the state or an agency of the state. Additionally, the bill reduces the notice period from 180 days to 90 days for property classified as agricultural under the Bert Harris Private Property Rights Protection Act.

B. EFFECT OF PROPOSED CHANGES:

Bert Harris Private Property Rights Protection Act

Currently, s. 70.001, F.S., sets forth the Bert Harris Act, which provides relief to property owners in instances where a specific action of a governmental entity has inordinately burdened the use of real property under circumstances that do not amount to a taking but result in the owner being permanently unable to attain the reasonable investment-backed expectation for the property. A 180-day time period is required between filing of a claim and the filing of an action to allow the government to make a written settlement offer. There is no special treatment for agricultural land which has been rezoned or subjected to a designation which lowers residential density. The bill reduces the time period from 180 days to 90 days.

Agricultural Enclaves

The Local Government Comprehensive Planning and Land Development Regulation Act of 1985 (act)[1] establishes a growth management system in Florida which requires each local government (or combination of local governments) to adopt a plan, capital improvements, and an intergovernmental coordination element. The local government comprehensive plan is intended to be the policy document guiding local governments in land use decision-making. Section 163.3184, F.S., sets forth certain requirements that must be met in the adoption of a comprehensive plan or plan amendment. The act contains a special designation and specific provisions relating to an urban infill and redevelopment area. However, there is neither a designation of property as an "agricultural enclave" nor any special provisions pertaining to such an area.

The bill establishes an "agricultural enclave" designation and authorizes the landowners of such to apply for a comprehensive plan amendment (CPA) that includes land uses and intensities of use consistent with uses and intensities of use of surrounding industrial, commercial, or residential uses. The property must meet Greenbelt criteria and have been in agricultural production for the past five years. An agricultural enclave is defined as an unincorporated, undeveloped parcel that:

- Is owned by a single person or entity;
- Has been in continuous use for bona fide agricultural purposes, as defined by statute[2] for a period of 5 years prior to the date of any comprehensive plan amendment application;
- Is surrounded on at least 75 percent of its perimeter by:
  - Property that has existing industrial, commercial, or residential development; or
  - Property that the local government has designated, in the local government's comprehensive plan, zoning map, and future land use map, as land that is to be developed for industrial, commercial, or residential purposes, and at least 75 percent of such property is existing industrial, commercial, or residential development;
- Has public services, including water, wastewater, transportation, schools, and recreation facilities, available or such public services are scheduled to be provided by the local

[1] ss. 163.3161-163.3244, F.S.
[2] s. 193.461, F.S.

government or by a alternative provider of local government infrastructure consistent with applicable concurrency provisions of s. 163.3180, F.S.; and
- Does not exceed 2,560 acres, however, if the property has existing or authorized residential development that will result in a build out density of at least 1,000 residents per square mile, the parcel shall be determined urban and may not exceed 5,120 acres.

The bill provides for good faith negotiations between the local government and landowner. The negotiation period is set for 180 days following the date the local government receives an application for a CPA. The bill requires, within 30 days of receipt by the local government of the application, for the local government and landowner to agree, in writing, to a schedule for information submittal, public hearings, negotiations, and final action on the CPA. This schedule may only be changed with the written consent of the local government and the landowner. Compliance with the schedule in written agreement constitutes good faith negotiations.

Upon completion of negotiations, regardless of the outcome, the CPA must be transmitted to the DCA for review at the first available transmittal cycle. The bill forbids the DCA from using certain rules relating to urban sprawl as a factor in determining compliance of a CPA.[3] If the landowner fails to negotiate in good faith, all rules of the DCA relating to urban sprawl apply to the CPA.

The bill states, "Nothing relating to amendments to local comprehensive plans in regards to agricultural enclaves shall preempt or replace any protection currently existing for any property located within the boundaries of the Wekiva Study Area or the Everglades Protection Area."

Land Acquisition

Chapter 259, F.S., is entitled "Land Acquisitions for Conservation and Recreation," and contains Florida's nationally recognized land acquisition programs:
- Conservation and Recreation Lands (CARL),
- Preservation 2000 (P2000), and
- Florida Forever.

The CARL program was created by the Legislature in 1979 to acquire and manage public lands and to conserve and protect environmentally unique and irreplaceable lands and lands of critical state concern. Documentary stamp tax revenues were deposited into the CARL Trust Fund to accomplish the program's purchases. The CARL program was replaced by the P2000 and Florida Forever program. Today, the CARL Trust Fund still receives documentary stamp tax and phosphate severance tax revenue which is used to manage conservation and recreation lands. However, it is not to be used for land acquisition without explicit permission from the Board of Trustees of the Internal Improvements Trust Fund.

The P2000 program was created in 1990 as a $3 billion land acquisition program funded through the annual sales of bonds. Each year for 10 years, the majority of $300 million in bond proceeds, less the cost of issuance, was distributed to the Department of Environmental Protection (DEP) for the purchase of environmental lands on the CARL list, the five water management districts for the purchase of water management lands, and the Department of Community Affairs for land acquisition loans and grants to local governments under the Florida Communities Trust Program. The Division of Forestry at the Department of Agriculture and Consumer Services (DACS) received P2000 funds as one of the smaller state acquisition programs.

The Florida Forever program was enacted by the Legislature in 1999 as a successor program to P2000. Florida Forever authorizes the issuance of not more than $3 billion in bonds over a 10-year period for land acquisition, water resource development projects, the preservation and restoration of open space and greenways, and for outdoor recreation purposes. Until the Florida Forever program

[3] *Id.*

was established, the title to lands purchased under the state's acquisition programs vested in the Board of Trustees of the Internal Improvement Trust Fund. Under Florida Forever, the Legislature provided public land acquisition agencies with authority to purchase eligible properties using alternatives to fee simple acquisitions. These "less than fee" acquisitions are one method of allowing agricultural lands to remain in production while preventing development on those lands. Public land acquisition agencies with remaining P2000 funds were also encouraged to pursue "less than fee" acquisitions.

The bill provides economic protection to an agricultural lessee when property, which has an agricultural lease, is purchased by the state or an agency of the state. The bill requires the purchasing agent to allow the lease to remain in full force for the remainder of the lease term. In addition, where consistent with the purposes for which the property was acquired, the purchasing agent must make reasonable efforts to keep in agricultural production lands which are in agricultural production at the time of purchase.

Regional Water Supply Planning
In the mid-1990's, when it became apparent that chief groundwater sources may not be sufficient to sustain Florida's population, the five water management districts were charged with developing regional water supply plans. Florida law [4] requires the plan to be conducted in an open public process, in coordination and cooperation with local governments, regional water supply authorities, government-owned and privately-owned water utilities, multijurisdictional water supply entities, self-suppliers, and other affected and interested parties.

The bill establishes that agricultural self-supplied water users have limitations on their ability to develop alternative water supplies.

Consumptive Use Permits
Water use permits can be issued to non-government individuals or entities for a period of up to 20 years, but some applicants are not aware that they may request a 20-year permit for renewals as well as the initial permit. The bill requires water management districts to notify agricultural applicants for consumptive use permits of their right to apply for permits valid for 20 years.

Memorandum of Agreement for Agricultural Related Exemption
Section 373.406(2), F.S., provides an exemption to persons engaged in the occupation of agriculture, silviculture, floriculture, or horticulture to alter the topography of any tract of land for purposes consistent with the practice of such occupation. The law further states such alteration may not be for the sole or predominant purpose of impounding or obstructing surface waters.

The bill establishes a process by which each water management district enters into a memorandum of agreement (MOA) with the Department of Agriculture and Consumer Services (DACS) to determine whether an existing or proposed activity qualifies for the agricultural wetlands exemption set forth in s. 373.406(2), F.S.

C. SECTION DIRECTORY:

Section 1: Amends s. 70.001, F.S.; amending notice period for filing action.

Section 2: Amends s. 163.3162, F.S.; providing for owner of land classified as an agricultural enclave to apply for an amendment to the comprehensive plan; providing requirements relating to applications; and, exempting certain amendments from specific rules of the Department of Community Affairs under certain circumstances.

Section 3: Amends s. 163.3164, F.S.; providing a definition for agricultural enclave.

[4] s. 373.0361, F.S.

Section 4: Creates s. 259.047, F.S.; providing requirements relating to purchase of land on which an agricultural lease exists.

Section 5: Amending s. 373.0361, F.S.; recognizing that water source options for agricultural self-suppliers are limited.

Section 6: Amending s. 373.2234, F.S.; correcting a cross reference.

Section 7: Amending s. 373.236, F.S.; requiring water management districts to inform landowners of the option to obtain certain consumptive use permits.

Section 8: Amending s. 373.407, F.S.; providing for memoranda of agreement regarding qualification for agricultural-related exemptions.

Section 9: Providing an effective date of upon becoming law.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   Indeterminate. See fiscal comments below.

2. Expenditures:

   See fiscal comments below.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   Indeterminate. It is unknown whether this bill will require local government expenditures.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

Not discernable

D. FISCAL COMMENTS:

According to the Department of Agriculture and Consumer Services (DACS), this bill should have no significant impact on the Division of Forestry. Some revenue would be received from existing agricultural production leases when that land is acquired as a state forest. The actual revenue cannot be determined at this time as it is not known what existing agricultural leases will be a part of future state forest acquisitions.

Section 8 of the bill addresses the development of a memorandum of agreement between DACS and each water management district in which DACS would conduct a review to determine exemptions from existing statute. DACS states that this review, involving the Office of Water Policy, would have no fiscal impact.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

It is not known whether this bill will require counties or municipalities to take action requiring the expenditure of funds. It does not appear to reduce the authority that counties or municipalities have to raise revenue in the aggregate or appear to reduce the percentage of state tax shared with counties or municipalities.

2. Other:

None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

As currently drafted, section 163.3162(5)(c), F.S., dealing with the preemption for property located within the boundaries of the Wekiva Study Area or the Everglades Protection Area, is ambiguous as to legislative intent.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 22, 2006, the Committee on Agriculture adopted two amendments to HB 1015. **Amendment 1** amended the procedure for applying for a comprehensive plan amendment, which is now the same for anyone seeking to establish an agricultural enclave. **Amendment 2** amended the definition of an "agricultural enclave" to have only one acreage designation rather than two.

On April 4, 2006, the Agriculture and Environment Appropriations Committee adopted one amendment revising the definition of an agricultural enclave to comport with the U.S. Census Bureaus' and Department of Community Affairs' language defining urban.

CHAMBER ACTION

The Agriculture & Environment Appropriations Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to agricultural economic development; amending s. 70.001, F.S.; providing a deadline for an owner of agricultural land to present a claim prior to filing an action against a governmental entity regarding private property rights; amending s. 163.3162, F.S.; providing for application for an amendment to the local government comprehensive plan by the owner of land that meets certain provisions of the definition of an agricultural enclave; providing requirements relating to such applications; exempting certain amendments from specified rules of the Department of Community Affairs under certain circumstances; amending s. 163.3164, F.S.; defining the term "agricultural enclave" for purposes of the Local Government Comprehensive Planning and Land Development Regulation Act; creating s. 259.047, F.S.; providing requirements relating to the purchase of land on which an agricultural lease exists; amending s. 373.0361,

F.S.; providing for recognition that alternative water supply development options for agricultural self-suppliers are limited; amending s. 373.2234, F.S.; conforming a cross-reference; amending s. 373.236, F.S.; requiring water management districts to inform landowners of the option to obtain certain consumptive use permits; creating s. 373.407, F.S.; providing for memoranda of agreement regarding qualification for agricultural-related exemptions; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Paragraphs (a) and (c) of subsection (4), paragraph (a) of subsection (5), and paragraph (c) of subsection (6) of section 70.001, Florida Statutes, are amended to read:

70.001 Private property rights protection.--

(4)(a) Not less than 180 days prior to filing an action under this section against a governmental entity, a property owner who seeks compensation under this section must present the claim in writing to the head of the governmental entity, except that if the property is classified as agricultural pursuant to s. 193.461, the notice period is 90 days. The property owner must submit, along with the claim, a bona fide, valid appraisal that supports the claim and demonstrates the loss in fair market value to the real property. If the action of government is the culmination of a process that involves more than one governmental entity, or if a complete resolution of all relevant issues, in the view of the property owner or in the view of a

governmental entity to whom a claim is presented, requires the active participation of more than one governmental entity, the property owner shall present the claim as provided in this section to each of the governmental entities.

(c) During the 90-day-notice period or the 180-day-notice period, unless extended by agreement of the parties, the governmental entity shall make a written settlement offer to effectuate:

1. An adjustment of land development or permit standards or other provisions controlling the development or use of land.

2. Increases or modifications in the density, intensity, or use of areas of development.

3. The transfer of developmental rights.

4. Land swaps or exchanges.

5. Mitigation, including payments in lieu of onsite mitigation.

6. Location on the least sensitive portion of the property.

7. Conditioning the amount of development or use permitted.

8. A requirement that issues be addressed on a more comprehensive basis than a single proposed use or development.

9. Issuance of the development order, a variance, special exception, or other extraordinary relief.

10. Purchase of the real property, or an interest therein, by an appropriate governmental entity.

11. No changes to the action of the governmental entity.

If the property owner accepts the settlement offer, the governmental entity may implement the settlement offer by appropriate development agreement; by issuing a variance, special exception, or other extraordinary relief; or by other appropriate method, subject to paragraph (d).

(5)(a) During the 90-day-notice period or the 180-day-notice period, unless a settlement offer is accepted by the property owner, each of the governmental entities provided notice pursuant to paragraph (4)(a) shall issue a written ripeness decision identifying the allowable uses to which the subject property may be put. The failure of the governmental entity to issue a written ripeness decision during the applicable 90-day-notice period or 180-day-notice period shall be deemed to ripen the prior action of the governmental entity, and shall operate as a ripeness decision that has been rejected by the property owner. The ripeness decision, as a matter of law, constitutes the last prerequisite to judicial review, and the matter shall be deemed ripe or final for the purposes of the judicial proceeding created by this section, notwithstanding the availability of other administrative remedies.

(6)

(c)1. In any action filed pursuant to this section, the property owner is entitled to recover reasonable costs and attorney fees incurred by the property owner, from the governmental entity or entities, according to their proportionate share as determined by the court, from the date of the filing of the circuit court action, if the property owner prevails in the action and the court determines that the

settlement offer, including the ripeness decision, of the governmental entity or entities did not constitute a bona fide offer to the property owner which reasonably would have resolved the claim, based upon the knowledge available to the governmental entity or entities and the property owner during the 90-day-notice period or the 180-day-notice period.

2. In any action filed pursuant to this section, the governmental entity or entities are entitled to recover reasonable costs and attorney fees incurred by the governmental entity or entities from the date of the filing of the circuit court action, if the governmental entity or entities prevail in the action and the court determines that the property owner did not accept a bona fide settlement offer, including the ripeness decision, which reasonably would have resolved the claim fairly to the property owner if the settlement offer had been accepted by the property owner, based upon the knowledge available to the governmental entity or entities and the property owner during the 90-day-notice period or the 180-day-notice period.

3. The determination of total reasonable costs and attorney fees pursuant to this paragraph shall be made by the court and not by the jury. Any proposed settlement offer or any proposed ripeness decision, except for the final written settlement offer or the final written ripeness decision, and any negotiations or rejections in regard to the formulation either of the settlement offer or the ripeness decision, are inadmissible in the subsequent proceeding established by this section except for the purposes of the determination pursuant to this paragraph.

Section 2. Subsection (5) is added to section 163.3162, Florida Statutes, to read:

163.3162 Agricultural Lands and Practices Act.--

(5) AMENDMENT TO LOCAL GOVERNMENT COMPREHENSIVE PLAN.--The owner of a parcel of land defined as an agricultural enclave under s. 163.3164(33) may apply for an amendment to the local government comprehensive plan pursuant to s. 163.3187. Such amendment is not subject to rule 9J-5.006(5), Florida Administrative Code, and may include land uses and intensities of use that are consistent with the uses and intensities of use of the industrial, commercial, or residential areas that surround the parcel.

(a) The local government and the owner of a parcel of land that is the subject of an application for an amendment shall have 180 days following the date that the local government receives an application to negotiate in good faith to reach consensus on the land uses and intensities of use that are consistent with the uses and intensities of use of the industrial, commercial, or residential areas that surround the parcel. Within 30 days after the local government's receipt of such an application, the local government and owner must agree in writing to a schedule for information submittal, public hearings, negotiations, and final action on the amendment, which schedule may thereafter be altered only with the written consent of the local government and the owner. Compliance with the schedule in the written agreement constitutes good-faith negotiations for purposes of paragraph (c).

(b) Upon conclusion of good-faith negotiations under paragraph (a), regardless of whether the local government and owner reach consensus on the land uses and intensities of use that are consistent with the uses and intensities of use of the industrial, commercial, or residential areas that surround the parcel, the amendment must be transmitted to the state land planning agency for review pursuant to s. 163.3184. If the local government fails to transmit the amendment within 180 days after receipt of an application, the amendment must be immediately transferred to the state land planning agency for such review at the first available transmittal cycle. The state land planning agency may not use any provision of rule 9J-5.006(5), Florida Administrative Code, as a factor in determining compliance of an amendment.

(c) If the owner fails to negotiate in good faith, rule 9J-5.006(5), Florida Administrative Code, shall apply throughout the negotiation and amendment process.

(d) Nothing within this subsection relating to agricultural enclaves shall preempt or replace any protection currently existing for any property located within the boundaries of the following areas:

1. The Wekiva Study Area, as described in s. 369.316; or

2. The Everglades Protection Area, as defined in s. 373.4592(2).

Section 3. Subsection (33) is added to section 163.3164, Florida Statutes, to read:

163.3164 Local Government Comprehensive Planning and Land Development Regulation Act; definitions.--As used in this act:

(33) "Agricultural enclave" means an unincorporated, undeveloped parcel that:

(a) Is owned by a single person or entity;

(b) Has been in continuous use for bona fide agricultural purposes, as defined by s. 193.461, for a period of 5 years prior to the date of any comprehensive plan amendment application;

(c) Is surrounded on at least 75 percent of its perimeter by:

1. Property that has existing industrial, commercial, or residential development; or

2. Property that the local government has designated, in the local government's comprehensive plan, zoning map, and future land use map, as land that is to be developed for industrial, commercial, or residential purposes, and at least 75 percent of such property is existing industrial, commercial, or residential development;

(d) Has public services, including water, wastewater, transportation, schools, and recreation facilities, available or such public services are scheduled to be provided by the local government or by an alternative provider of local government infrastructure consistent with applicable concurrency provisions of s. 163.3180; and

(e) Does not exceed 2,560 acres; however, if the property has existing or authorized residential development that will result in a density at buildout of at least 1,000 residents per square mile, then the area shall be determined to be urban and the parcel may not exceed 5,120 acres.

Section 4. Section 259.047, Florida Statutes, is created to read:

259.047 Acquisition of land on which an agricultural lease exists.--

(1) When land with an existing agricultural lease is acquired in fee simple pursuant to this chapter or chapter 375, the existing agricultural lease may continue in force for the actual time remaining on the lease agreement. Any entity managing lands acquired under this section must consider existing agricultural leases in the development of a land management plan required under s. 253.034.

(2) Where consistent with the purposes for which the property was acquired, the state or acquiring entity shall make reasonable efforts to keep lands in agricultural production which are in agricultural production at the time of acquisition.

Section 5. Paragraph (a) of subsection (2) of section 373.0361, Florida Statutes, is amended to read:

373.0361 Regional water supply planning.--

(2) Each regional water supply plan shall be based on at least a 20-year planning period and shall include, but need not be limited to:

(a) A water supply development component for each water supply planning region identified by the district which includes:

1. A quantification of the water supply needs for all existing and future reasonable-beneficial uses within the planning horizon. The level-of-certainty planning goal associated with identifying the water supply needs of existing

and future reasonable-beneficial uses shall be based upon meeting those needs for a 1-in-10-year drought event. Population projections used for determining public water supply needs must be based upon the best available data. In determining the best available data, the district shall consider the University of Florida's Bureau of Economic and Business Research (BEBR) medium population projections and any population projection data and analysis submitted by a local government pursuant to the public workshop described in subsection (1) if the data and analysis support the local government's comprehensive plan. Any adjustment of or deviation from the BEBR projections must be fully described, and the original BEBR data must be presented along with the adjusted data.

2. A list of water supply development project options, including traditional and alternative water supply project options, from which local government, government-owned and privately owned utilities, regional water supply authorities, multijurisdictional water supply entities, self-suppliers, and others may choose for water supply development. In addition to projects listed by the district, such users may propose specific projects for inclusion in the list of alternative water supply projects. If such users propose a project to be listed as an alternative water supply project, the district shall determine whether it meets the goals of the plan, and, if so, it shall be included in the list. The total capacity of the projects included in the plan shall exceed the needs identified in subparagraph 1. and shall take into account water conservation and other demand management measures, as well as water resources

constraints, including adopted minimum flows and levels and water reservations. Where the district determines it is appropriate, the plan should specifically identify the need for multijurisdictional approaches to project options that, based on planning level analysis, are appropriate to supply the intended uses and that, based on such analysis, appear to be permittable and financially and technically feasible. The list of water supply development options must contain provisions that recognize that alternative water supply options for agricultural self-suppliers are limited.

3. For each project option identified in subparagraph 2., the following shall be provided:

a. An estimate of the amount of water to become available through the project.

b. The timeframe in which the project option should be implemented and the estimated planning-level costs for capital investment and operating and maintaining the project.

c. An analysis of funding needs and sources of possible funding options. For alternative water supply projects the water management districts shall provide funding assistance in accordance with s. 373.1961(3).

d. Identification of the entity that should implement each project option and the current status of project implementation.

Section 6. Section 373.2234, Florida Statutes, is amended to read:

373.2234 Preferred water supply sources.--The governing board of a water management district is authorized to adopt rules that identify preferred water supply sources for

consumptive uses for which there is sufficient data to establish that a preferred source will provide a substantial new water supply to meet the existing and projected reasonable-beneficial uses of a water supply planning region identified pursuant to s. 373.0361(1), while sustaining existing water resources and natural systems. At a minimum, such rules must contain a description of the preferred water supply source and an assessment of the water the preferred source is projected to produce. If an applicant proposes to use a preferred water supply source, that applicant's proposed water use is subject to s. 373.223(1), except that the proposed use of a preferred water supply source must be considered by a water management district when determining whether a permit applicant's proposed use of water is consistent with the public interest pursuant to s. 373.223(1)(c). A consumptive use permit issued for the use of a preferred water supply source must be granted, when requested by the applicant, for at least a 20-year period and may be subject to the compliance reporting provisions of s. 373.236(4) ~~(3)~~. Nothing in this section shall be construed to exempt the use of preferred water supply sources from the provisions of ss. 373.016(4) and 373.223(2) and (3), or be construed to provide that permits issued for the use of a nonpreferred water supply source must be issued for a duration of less than 20 years or that the use of a nonpreferred water supply source is not consistent with the public interest. Additionally, nothing in this section shall be interpreted to require the use of a preferred water supply source or to restrict or prohibit the use of a nonpreferred water supply source. Rules adopted by the

governing board of a water management district to implement this section shall specify that the use of a preferred water supply source is not required and that the use of a nonpreferred water supply source is not restricted or prohibited.

Section 7. Present subsections (2) and (3) of section 373.236, Florida Statutes, are renumbered as subsections (3) and (4), respectively, present subsection (4) is renumbered as subsection (5) and amended, and a new subsection (2) is added to that section, to read:

373.236 Duration of permits; compliance reports.--

(2) The Legislature finds that some agricultural landowners remain unaware of their ability to request a 20-year consumptive use permit under subsection (1) for initial permits or for renewals. Therefore, the water management districts shall inform agricultural applicants of this option in the application form.

(5) ~~(4)~~ Permits approved for the development of alternative water supplies shall be granted for a term of at least 20 years. However, if the permittee issues bonds for the construction of the project, upon request of the permittee prior to the expiration of the permit, that permit shall be extended for such additional time as is required for the retirement of bonds, not including any refunding or refinancing of such bonds, provided that the governing board determines that the use will continue to meet the conditions for the issuance of the permit. Such a permit is subject to compliance reports under subsection (4) ~~(3)~~.

Section 8. Section 373.407, Florida Statutes, is created to read:

373.407 Memorandum of agreement for an agricultural-related exemption.--No later than July 1, 2007, the Department of Agriculture and Consumer Services and each water management district shall enter into a memorandum of agreement under which the Department of Agricultural and Consumer Services shall assist in a determination by a water management district as to whether an existing or proposed activity qualifies for the exemption in s. 373.406(2). The memorandum of agreement shall provide a process by which, upon the request of a water management district, the Department of Agriculture and Consumer Services shall conduct a nonbinding review as to whether an existing or proposed activity qualifies for an agricultural-related exemption in s. 373.406(2). The memorandum of agreement shall provide processes and procedures by which the Department of Agriculture and Consumer Services shall undertake this review effectively and efficiently and issue a recommendation.

Section 9. This act shall take effect upon becoming a law.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 1

Bill No. **HB 1015 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	____

Council/Committee hearing bill: State Resources Council

Representative Pickens offered the following:

Amendment

On line 147, after the period, insert:

Each application for a comprehensive plan amendment under this paragraph, for a parcel larger than 640 acres, must include appropriate new urbanism concepts such as clustering, mixed-use development, the creation of rural village and city centers, and the transfer of development rights in order to discourage urban sprawl while protecting landowner rights.

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 2

Bill No. **HB 1015 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: State Resources Council

Representative Pickens offered the following:

Amendment

On lines 151 & 171 remove: an application

and insert: a complete application

HOUSE AMENDMENT FOR COUNCIL/COMMITTEE PURPOSES

Amendment No. 3

Bill No. **HB 1015 CS**

COUNCIL/COMMITTEE ACTION

ADOPTED	__ (Y/N)
ADOPTED AS AMENDED	__ (Y/N)
ADOPTED W/O OBJECTION	__ (Y/N)
FAILED TO ADOPT	__ (Y/N)
WITHDRAWN	__ (Y/N)
OTHER	_____

Council/Committee hearing bill: State Resources Council

Representative Pickens offered the following:

Amendment

Remove lines 208-213 and insert:

(d) Has public services, including water, wastewater, transportation, schools, and recreation facilities, available or such public services are scheduled in the capital improvement element to be provided by the local government or can be provided by an alternative provider of local government infrastructure in order to ensure consistency with applicable concurrency provisions of s. 163.3180; and

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1153 CS Concealed Weapons
SPONSOR(S): Coley and others
TIED BILLS: **IDEN./SIM. BILLS:** SB 1290

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture Committee	10 Y, 0 N	Kaiser	Reese
2) Military & Veteran Affairs Committee	7 Y, 0 N, w/CS	Marino	Cutchins
3) State Resources Council		Kaiser	Hamby
4)			
5)			

SUMMARY ANALYSIS

The Department of Agriculture and Consumer Services (department) authorizes the issuance and renewal of licenses to carry concealed weapons or firearms to persons qualified under the provisions of the Florida Statutes[1]. A licensee who fails to renew his/her license on or before the expiration date must pay a $15 late fee in order to renew the license. A license is deemed permanently expired, and will not be renewed, if 6 months or more have lapsed since its expiration. A person seeking renewal after permanent expiration must submit an application, an $85 fee, and the documentation required under the weapons and firearms chapter of the Florida Statutes[2]. The department currently makes every effort to accommodate active military personnel in the renewal of licenses without charging the late fee if license holders can show their military service impeded the renewal process.

HB 1153 provides that the concealed weapon or firearm license of a servicemember who is serving on military orders that take him or her over 35 miles away from his or her residence shall not expire until 180 days after his or her return to his or her residence. To take advantage of this extension, the bill requires the servicemember to provide, to the department, written verification in the form of military orders or a letter from their commanding officer.

This legislation has no fiscal impact on state or local government.

The effective date of this legislation is July 1, 2006.

[1] s. 790.06, F.S.
[2] Chapter 790, F.S.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Safeguard individual liberty: The bill provides an extension of 180 days for renewal of a license to carry a concealed weapon for a licensee who is a servicemember serving on military orders that take him or her over 35 miles away from his or her residence.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

The Department of Agriculture and Consumer Services (department) authorizes the issuance and renewal of licenses to carry concealed weapons or firearms to persons qualified under the provisions of s. 790.06, F.S. The license is valid for a period of five years from the date of issuance, and must be carried, along with valid identification, when the license holder is carrying his/her firearm in a concealed manner. The license and identification must be displayed to law enforcement officers upon demand. Violations of these provisions are a noncriminal violation with a fine of $25.[3]

The department is required to notify a licensee no later than 90 days prior to the expiration date of his/her license. The notification is by mail and includes a renewal form. License holders are required to notify the department of permanent address changes or after having a license lost or destroyed. Notification must take place within 30 days of either event. Failure to notify the department results in a noncriminal violation that carries a $25 fine for either offense.

A licensee who fails to renew his/her license on or before the expiration date must pay a $15 late fee in order to renew the license. A license is deemed permanently expired, and will not be renewed, if 6 months or more have lapsed since its expiration. A person seeking renewal after permanent expiration must submit an application, an $85 fee, and the documentation required under s. 790.06(5), F.S.

The department currently makes every effort to accommodate active military personnel in the renewal of licenses without charging the late fee if license holders can show their military service impeded the renewal process.

Effect of Proposed Changes

HB 1153 provides that the concealed weapon or firearm license of a servicemember[4] who is serving on military orders that take him or her over 35 miles away from his or her residence shall not expire until 180 days after his or her return to his or her residence. This appears to allow anyone called to federal or active duty, the opportunity to be free from paying late fees due to his or her license expiration date passing while he or she is deployed on military orders. However, such a licensee is still subject to the 180-day window between the adjusted expiration date (return from orders plus 180 days) and the permanent expiration as described in Current Situation above. The bill appears to help the servicemember by pushing these timelines to well after the servicemember has returned to his or her residence after fulfilling their military orders.

The bill also provides that in order to take advantage of this extension, the servicemember must provide written verification, in the form of their military orders or a letter from their commander, to the department.

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[3] s. 790.06(1), F.S.

[4] As defined in s. 250.01, F.S.: "Servicemember" means any person serving as a member of the United States Armed Forces on active duty or state active duty and all members of the Florida National Guard and United States Reserve Forces.

C. SECTION DIRECTORY:

Section 1: Amends s. 790.06, F.S.; provides for an extension of 180 days for renewal of license to carry a concealed weapon for licensee who is a servicemember serving on military orders that take him or her over 35 miles away from his or her residence; provides that such licensee must provide written verification to the Department of Agriculture and Consumer Services to use extension.

Section 2: Provides an effective date of July 1, 2006.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None

2. Expenditures:

   None

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None

2. Expenditures:

   None

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill eliminates additional costs incurred by the public in renewing concealed weapons permits after the expiration date of the license.

D. FISCAL COMMENTS:

Although the Department of Agriculture and Consumer Service (department) may not collect late fees from individuals who would benefit from the provisions of the bill, it would not fiscally impact the department due to the current practice of waiving late fees for military personnel whose military duty impedes the renewal process.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   The bill does not require counties or municipalities to take an action requiring the expenditure of funds, does not reduce the authority that counties or municipalities have to raise revenues in the aggregate, and does not reduce the percentage of state tax shared with counties or municipalities.

2. Other:

   None

B. RULE-MAKING AUTHORITY:

None

C. DRAFTING ISSUES OR OTHER COMMENTS:

None

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 5, 2006, the Committee on Military & Veteran Affairs approved a strike-all amendment. The amendment changes those eligible for the extension in the bill from those who participated in Operations Iraqi Freedom and Enduring Freedom to any servicemember, as defined in 250.01, who is serving on military orders over 35 miles away from his or her residence. The amendment makes some technical changes, such as reorganizing the construction of the language of the bill.

CHAMBER ACTION

The Military & Veteran Affairs Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to concealed weapons; amending s. 790.06, F.S.; providing that a concealed weapon or firearm license of a servicemember serving on military orders away from his or her residence shall not expire until 180 days after the date upon which the servicemember returns from serving on military orders; providing procedures and requirements with respect to the extension; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (11) of section 790.06, Florida Statutes, is amended to read:

790.06 License to carry concealed weapon or firearm.--

(11)(a) No less than 90 days before ~~prior to~~ the expiration date of the license, the Department of Agriculture

and Consumer Services shall mail to each licensee a written notice of the expiration and a renewal form prescribed by the Department of Agriculture and Consumer Services. The licensee must renew his or her license on or before the expiration date by filing with the Department of Agriculture and Consumer Services the renewal form containing a notarized affidavit stating that the licensee remains qualified pursuant to the criteria specified in subsections (2) and (3), a color photograph as specified in paragraph (5)(e), and the required renewal fee. Out-of-state residents must also submit a completed fingerprint card and fingerprint processing fee. The license shall be renewed upon receipt of the completed renewal form, color photograph, appropriate payment of fees, and, if applicable, a completed fingerprint card. Additionally, a licensee who fails to file a renewal application on or before its expiration date must renew his or her license by paying a late fee of $15. A ~~No~~ license may not ~~shall~~ be renewed 180 days ~~6 months~~ or more after its expiration date, and this ~~such~~ license is ~~shall be~~ deemed to be permanently expired. A person whose license has been permanently expired may reapply for licensure; however, an application for licensure and fees under ~~pursuant to~~ subsection (5) must be submitted, and a background investigation shall be conducted pursuant to ~~the provisions of~~ this section. A person ~~Persons~~ who knowingly files ~~file~~ false information under ~~pursuant to~~ this subsection is ~~shall be~~ subject to criminal prosecution under s. 837.06.

(b) A license issued to a servicemember, as defined in s. 250.01, shall be subject to paragraph (a); however, such a

license shall not expire while the servicemember is serving on military orders that take him or her over 35 miles from his or her residence and shall be extended for up to 180 days after his or her return to his or her residence. If the license renewal requirements in paragraph (a) are met within the 180-day extension period, the servicemember shall not be charged any additional costs, such as, but not limited to, late fees or delinquency fees, above the normal license fees. The servicemember must present to the department a copy of his or her official military orders or a written verification from the member's commanding officer before the end of the 180-day period in order to qualify for the extension.

Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1155 Contaminated Drycleaning Facilities
SPONSOR(S): Evers
TIED BILLS: **IDEN./SIM. BILLS:** SB 2174

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Environmental Regulation Committee	5 Y, 0 N	Kliner	Kliner
2) Agriculture & Environment Appropriations Committee	11 Y, 0 N	Dixon	Dixon
3) State Resources Council		Kliner	Hamby
4)			
5)			

SUMMARY ANALYSIS

The bill will effectively re-open the Drycleaning Solvent Cleanup Program (the DSC Program) for a person who owns or operates (or owned or operated) a dry cleaning facility where there is contamination at the site as a result of an accident that occurred prior to January 1, 1975. "Accident" is defined as an unplanned and unanticipated occurrence beyond the control of the owner or operator that resulted in (1) physical damage to the facility and (2) contamination of the site that may reasonably be determined to have been caused by, or exacerbated by, actions of responders to the occurrence.

The DSC Program would be re-opened to persons whether or not they filed an application of eligibility on or before December 31, 1998, which is the termination date of the DSC Program whereby no cleanup costs would be absorbed at the expense of the dry cleaning restoration funds.

The fiscal impact is indeterminate. The Department of Environmental Protection (the DEP) knows of just one contaminated site that is not included in the program that may be eligible under the proposed law. There is no meaningful way to estimate how many claims of this type could be filed in the future resulting from accidents that occurred as contemplated by the bill language.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promotes Personal Responsibility: This bill effectively re-opens the Drycleaning Solvent Cleanup Program (the DSC Program) for a person who owns or operates (or owned or operated) a dry cleaning facility and there is contamination at the site as a result of an accident.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Dry Cleaning Generally:
Dry-cleaners are facilities engaged in the cleaning of fabrics in a nonaqueous solvent by means of one or more washes in a solvent, extraction of excess solvent by spinning, and drying by tumbling in an airstream. Such facilities include a washer, dryer, filter, and purification systems, emission control equipment, waste disposal systems, holding tanks, pumps and attendant piping and valves.

Dry-cleaning facilities utilizing the solvent perchloroethylene, or "perc," which is considered an air toxic or hazardous pollutant, are eligible to operate as a business in Florida under the terms of a Title V air permit pursuant to the requirements of Chapter 62-213, Florida Administrative Code.

Drycleaning Solvent Cleanup Program History:
In 1994, the Legislature enacted Chapter 94-355, Laws of Florida., to provide a source of funding for rehabilitation of sites and drinking water supplies contaminated by dry cleaning solvents. The act provided for the establishment of a registration program under which dry-cleaning facilities and wholesale suppliers were to register by June 30, 1995.

The DSC Program is administered by the DEP. Eligibility criteria for participation are as follows:

- The facility must have registered with the DEP;
- The facility was determined to have complied with the DEP rules;
- The facility was not operated in a grossly negligent manner;
- The facility was not listed on the Federal "Superfund" list;
- The facility was not under orders from the U. S. Environmental Protection Agency (EPA) and was not required to have a hazardous waste permit.

Further, the real property owner or the owner or operator of the dry cleaning facility or the wholesale supply facility must not have willfully concealed the discharge of dry-cleaning solvents, must have remitted all taxes due, must have provided evidence of contamination by dry cleaning solvents pursuant to DEP rules, and must have reported the contamination prior to December 31, 2005.

Generally, the program provides that the cleanup costs are to be absorbed at the expense of the dry cleaning funds available in the Water Quality Assurance Trust Fund. Deductibles are paid by the applicant as follows:

- For contamination reported by 6/30/97 -- $1,000 per incident.
- For contamination reported from 7/1/97 thru 9/30/98 -- $5,000 per incident.
- For contamination reported from 10/1/98 thru 12/31/98 -- $10,000 per incident.

For contamination reported after December 31, 1998, no cleanup costs will be absorbed at the expense of the dry cleaning restoration funds. In other words, contamination reported after this date will be cleaned up at the expense of the reporting entity.

Liability Protection is Provided Under the Program:
Dry-cleaning facility owners or operators, wholesale supply facilities, and real property owners are afforded certain liability protections and are not subject to administrative or judicial action brought by or on behalf of any person, or state or local government, for perc discharges provided certain specified conditions are met. Each owner or operator of a currently operating dry cleaning facility must obtain third-party liability insurance for $1 million.

A real property owner may conduct a voluntary cleanup pursuant to DEP rules whether or not the facility has been determined by the DEP to be eligible for the program. A real property owner or any other party that conducts such voluntary cleanup may not seek cost recovery from the program funds, but is immune from liability to any person, or state or local government, to compel site rehabilitation or pay for the cost of rehabilitation of environmental contamination, or to pay any fines or penalties regarding rehabilitation, so long as the real property owner complies with certain specified conditions.

Funding the Program
Funding for the program comes from three main sources:

- A two percent tax on gross receipts on businesses engaged in dry-cleaning and laundering,
- A $5 per gallon tax on perc sold to facilities in the state, a deductible payment based on the date of application for the program, and
- A $100 registration fee collected from the facilities.

According to the DEP, the annual collections have averaged $7.6 million. There are over 1,400 sites in the closed program and at the current rate of clean-up, it will take over 60 years to clean up all sites.

Effect of Proposed Changes

The bill will effectively re-open the DSC Program for a person who owns or operates (or owned or operated) a dry-cleaning facility where there is (or was) contamination at the site as a result of an accident which occurred prior to January 1, 1975. "Accident" is defined as an unplanned and unanticipated occurrence beyond the control of the owner or operator that resulted in (1) physical damage to the facility and (2) contamination of the site that may reasonably be determined to have been caused by, or exacerbated by, actions of responders to the occurrence.

The DSC Program would be re-opened to persons whether or not they filed an application of eligibility on or before December 31, 1998, which is the termination date of the program whereby no cleanup costs would be absorbed at the expense of the dry cleaning restoration funds.

Example 1: On April 6, 2004, a dump truck driver sets the parking brake and leaves the cab of his vehicle to check his load. The braking system fails and the truck rolls down a hill and crashes into the Pressed 4 Time dry-cleaning facility, extensively damaging the building and breaching the perc storage container. The spill is otherwise controlled by the containment system that was installed by the owner; however, the firemen responding to the accident hoses down the site which results in a perc contamination of the surrounding land area. Under the proposed law, the Pressed 4 Time owner/operator would not be permitted to submit the site for cleanup under the otherwise closed program.

Example 2: The same scenario as above, except the date of the accident occurred on April 6, 1974. The owner did not file an application under the program. Under the proposed law, the owner would be eligible for cleanup under the otherwise closed program.

Example 3: The same scenario as above, except that the responders do not hose down the site and do not exacerbate the spill. As such, the conditions do not permit eligibility into the program and any contamination will be the responsibility of the owner/operator.

C. SECTION DIRECTORY:

Section 1 Amends s. 376.3078, Florida Statutes, adding a new paragraph (i) to subsection (3), and redesignating all subsequent paragraphs, providing that a dry-cleaning facility where there exists contamination as a result of an accident that occurred prior to January 1, 1975, is eligible under the DSC Program, regardless of whether an application for eligibility was filed on or before the termination date of the program. This section also provides a definition of the term "accident."

Section 2 Provides an effective date.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

   None.

2. Expenditures:

   See Fiscal Comments.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill would re-open the DSC Program for an owner or operator of a dry cleaning facility with contamination that is the result of an accident that occurred prior to January 1, 1975, and which the contamination was caused or exacerbated by responders to the accident.

D. FISCAL COMMENTS:

The program originally provided for deductibles paid by the applicant. The deductible amounts varied in cost from $1,000 to $10,000, depending on the date the application was filed. The bill does not provide for deductibles so it is assumed that the entire cost of the cleanup would be borne by the trust fund.

Clean-up of a contaminated facility can range from approximately $30,000 to $2 million; the average cost being approximately $475,000. The DEP knows of only one incident whereby an auto accident and the actions of responders exacerbated a spill of perc. The site in question is not currently eligible for inclusion in the program for clean-up. The DEP has no record of how many other potential sites may be affected by this proposed legislation. According to the DEP, if the program is not reopened as envisioned by the bill and under current funding levels, the clean-up will take approximately 60 years.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

Not applicable because this bill does not appear to: require cities or counties to spend funds or take actions requiring the expenditure of funds; reduce the authority that cities or counties have to raise revenues in the aggregate; or reduce the percentage of a state tax shared with cities or counties.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

No rulemaking authority is required to implement the provisions of this bill.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

N/A

A bill to be entitled

An act relating to contaminated drycleaning facilities; amending s. 376.3078, F.S.; providing that contaminated drycleaning facilities damaged by accident prior to a specified date are eligible for state-funded site rehabilitation; defining the term "accident"; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (3) of section 376.3078, Florida Statutes, is amended to read:

376.3078 Drycleaning facility restoration; funds; uses; liability; recovery of expenditures.--

(3) REHABILITATION LIABILITY.--

(a) In accordance with the eligibility provisions of this section, a real property owner, nearby real property owner, or person who owns or operates, or who otherwise could be liable as a result of the operation of, a drycleaning facility or a wholesale supply facility is not liable for or subject to administrative or judicial action brought by or on behalf of any state or local government or agency thereof or by or on behalf of any person to compel rehabilitation or pay for the costs of rehabilitation of environmental contamination resulting from the discharge of drycleaning solvents. Subject to the delays that may occur as a result of the prioritization of sites under this section for any qualified site, costs for activities described in paragraph (2)(b) shall be absorbed at the expense of the

drycleaning facility restoration funds, without recourse to reimbursement or recovery from the real property owner, nearby real property owner, or owner or operator of the drycleaning facility or the wholesale supply facility. Notwithstanding any other provision of this chapter, this subsection applies to causes of action accruing on or after the effective date of this act and applies retroactively to causes of action accruing before the effective date of this act for which a lawsuit has not been filed before the effective date of this act.

(b) With regard to drycleaning facilities or wholesale supply facilities that have operated as drycleaning facilities or wholesale supply facilities on or after October 1, 1994, any such drycleaning facility or wholesale supply facility at which there exists contamination by drycleaning solvents shall be eligible under this subsection regardless of when the drycleaning contamination was discovered, provided that the drycleaning facility or the wholesale supply facility:

1. Has been registered with the department;

2. Is determined by the department to be in compliance with the department's rules regulating drycleaning solvents, drycleaning facilities, or wholesale supply facilities on or after November 19, 1980;

3. Has not been operated in a grossly negligent manner at any time on or after November 19, 1980;

4. Has not been identified to qualify for listing, nor is listed, on the National Priority List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 as amended by the Superfund Amendments and

Reauthorization Act of 1986, and as subsequently amended;

5. Is not under an order from the United States Environmental Protection Agency pursuant to s. 3008(h) of the Resource Conservation and Recovery Act as amended (42 U.S.C.A. s. 6928(h)), or has not obtained and is not required to obtain a permit for the operation of a hazardous waste treatment, storage, or disposal facility, a postclosure permit, or a permit pursuant to the federal Hazardous and Solid Waste Amendments of 1984;

and provided that the real property owner or the owner or operator of the drycleaning facility or the wholesale supply facility has not willfully concealed the discharge of drycleaning solvents and has remitted all taxes due pursuant to ss. 376.70 and 376.75, has provided documented evidence of contamination by drycleaning solvents as required by the rules developed pursuant to this section, has reported the contamination prior to December 31, 1998, and has not denied the department access to the site.

(c) With regard to drycleaning facilities or wholesale supply facilities that cease to be operated as drycleaning facilities or wholesale supply facilities prior to October 1, 1994, such facilities, at which there exists contamination by drycleaning solvents, shall be eligible under this subsection regardless of when the contamination was discovered, provided that the drycleaning facility or wholesale supply facility:

1. Was not determined by the department, within a reasonable time after the department's discovery, to have been

out of compliance with the department rules regulating drycleaning solvents, drycleaning facilities, or wholesale supply facilities implemented at any time on or after November 19, 1980;

2. Was not operated in a grossly negligent manner at any time on or after November 19, 1980;

3. Has not been identified to qualify for listing, nor is listed, on the National Priority List pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, and as subsequently amended; and

4. Is not under an order from the United States Environmental Protection Agency pursuant to s. 3008(h) of the Resource Conservation and Recovery Act, as amended, or has not obtained and is not required to obtain a permit for the operation of a hazardous waste treatment, storage, or disposal facility, a postclosure permit, or a permit pursuant to the federal Hazardous and Solid Waste Amendments of 1984;

and provided that the real property owner or the owner or operator of the drycleaning facility or the wholesale supply facility has not willfully concealed the discharge of drycleaning solvents, has provided documented evidence of contamination by drycleaning solvents as required by the rules developed pursuant to this section, has reported the contamination prior to December 31, 1998, and has not denied the department access to the site.

(d) For purposes of determining eligibility, a drycleaning facility or wholesale supply facility was operated in a grossly negligent manner if the department determines that the owner or operator of the drycleaning facility or the wholesale supply facility:

1. Willfully discharged drycleaning solvents onto the soils or into the waters of the state after November 19, 1980, with the knowledge, intent, and purpose that the discharge would result in harm to the environment or to public health or result in a violation of the law;

2. Willfully concealed a discharge of drycleaning solvents with the knowledge, intent, and purpose that the concealment would result in harm to the environment or to public health or result in a violation of the law; or

3. Willfully violated a local, state, or federal law or rule regulating the operation of drycleaning facilities or wholesale supply facilities with the knowledge, intent, and purpose that the act would result in harm to the environment or to public health or result in a violation of the law.

(e)1. With respect to eligible drycleaning solvent contamination reported to the department as part of a completed application as required by the rules developed pursuant to this section by June 30, 1997, the costs of activities described in paragraph (2)(b) shall be absorbed at the expense of the drycleaning facility restoration funds, less a $1,000 deductible per incident, which shall be paid by the applicant or current property owner. The deductible shall be paid within 60 days after receipt of billing by the department.

2. For contamination reported to the department as part of a completed application as required by the rules developed under this section, from July 1, 1997, through September 30, 1998, the costs shall be absorbed at the expense of the drycleaning facility restoration funds, less a $5,000 deductible per incident. The deductible shall be paid within 60 days after receipt of billing by the department.

3. For contamination reported to the department as part of a completed application as required by the rules developed pursuant to this section from October 1, 1998, through December 31, 1998, the costs shall be absorbed at the expense of the drycleaning facility restoration funds, less a $10,000 deductible per incident. The deductible shall be paid within 60 days after receipt of billing by the department.

4. For contamination reported after December 31, 1998, no costs will be absorbed at the expense of the drycleaning facility restoration funds.

(f) ~~The provisions of~~ This subsection does ~~shall~~ not apply to any site where the department has been denied site access to implement the provisions of this section.

(g) In order to identify those drycleaning facilities and wholesale supply facilities that have experienced contamination resulting from the discharge of drycleaning solvents and to ensure the most expedient rehabilitation of such sites, the owners and operators of drycleaning facilities and wholesale supply facilities are encouraged to detect and report contamination from drycleaning solvents related to the operation of drycleaning facilities and wholesale supply facilities. The

department shall establish reasonable guidelines for the written reporting of drycleaning contamination and shall distribute forms to registrants under s. 376.303(1)(d), and to other interested parties upon request, to be used for such purpose.

(h) A report of drycleaning solvent contamination at a drycleaning facility or wholesale supply facility made to the department by any person in accordance with this subsection, or any rules promulgated pursuant hereto, may not be used directly as evidence of liability for such discharge in any civil or criminal trial arising out of the discharge.

(i) A drycleaning facility at which contamination by drycleaning solvents exists and which was damaged by accident prior to January 1, 1975, is eligible under this subsection, regardless of whether an application for eligibility was filed on or before December 31, 1998. As used in this paragraph, the term "accident" means an unplanned and unanticipated occurrence beyond the control of the owner or operator of a drycleaning facility which resulted in physical damage to the facility when the actions of responders to such occurrence could reasonably be determined to have caused or exacerbated contamination by drycleaning solvents at such facility.

(j) ~~(i)~~ ~~The provisions of~~ This subsection does ~~shall~~ not apply to drycleaning facilities owned or operated by the state or Federal Government.

(k) ~~(j)~~ Due to the value of Florida's potable water, it is the intent of the Legislature that the department initiate and facilitate as many cleanups as possible utilizing the resources of the state, local governments, and the private sector. The

department is authorized to adopt necessary rules and enter into contracts to carry out the intent of this subsection and to limit or prevent future contamination from the operation of drycleaning facilities and wholesale supply facilities.

(l) ~~(k)~~ It is not the intent of the Legislature that the state become the owner or operator of a drycleaning facility or wholesale supply facility by engaging in state-conducted cleanup.

(m) ~~(l)~~ The owner, operator, and either the real property owner or agent of the real property owner may apply for the Drycleaning Contamination Cleanup Program by jointly submitting a completed application package to the department pursuant to the rules that shall be adopted by the department. If the application cannot be jointly submitted, then the applicant shall provide notice of the application to other interested parties. After reviewing the completed application package, the department shall notify the applicant in writing as to whether the drycleaning facility or wholesale supply facility is eligible for the program. If the department denies eligibility for a completed application package, the notice of denial shall specify the reasons for the denial, including specific and substantive findings of fact, and shall constitute agency action subject to the provisions of chapter 120. For the purposes of ss. 120.569 and 120.57, the real property owner and the owner and operator of a drycleaning facility or wholesale supply facility which is the subject of a decision by the department with regard to eligibility shall be deemed to be parties whose substantial interests are determined by the department's

decision to approve or deny eligibility.

(n) ~~(m)~~ Eligibility under this subsection applies to the drycleaning facility or wholesale supply facility, and attendant site rehabilitation applies to such facilities and to any place where drycleaning-solvent contamination migrating from the eligible facility is found. A determination of eligibility or ineligibility shall not be affected by any conveyance of the ownership of the drycleaning facility, wholesale supply facility, or the real property on which such facility is located. Nothing contained in this chapter shall be construed to allow a drycleaning facility or wholesale supply facility which would not be eligible under this subsection to become eligible as a result of the conveyance of the ownership of the ineligible drycleaning facility or wholesale supply facility to another owner.

(o) ~~(n)~~ If funding for the drycleaning contamination rehabilitation program is eliminated, the provisions of this subsection shall not apply.

(p) ~~(o)~~ 1. The department shall have the authority to cancel the eligibility of any drycleaning facility or wholesale supply facility that submits fraudulent information in the application package or that fails to continuously comply with the conditions of eligibility set forth in this subsection, or has not remitted all fees pursuant to s. 376.303(1)(d), or has not remitted the deductible payments pursuant to paragraph (e).

2. If the program eligibility of a drycleaning facility or wholesale supply facility is subject to cancellation pursuant to this section, then the department shall notify the applicant in

writing of its intent to cancel program eligibility and shall state the reason or reasons for cancellation. The applicant shall have 45 days to resolve the reason or reasons for cancellation to the satisfaction of the department. If, after 45 days, the applicant has not resolved the reason or reasons for cancellation to the satisfaction of the department, the order of cancellation shall become final and shall be subject to the provisions of chapter 120.

(q) ~~(p)~~ A real property owner shall not be subject to administrative or judicial action brought by or on behalf of any person or local or state government, or agency thereof, for gross negligence or violations of department rules prior to January 1, 1990, which resulted from the operation of a drycleaning facility, provided that the real property owner demonstrates that:

1. The real property owner had ownership in the property at the time of the gross negligence or violation of department rules and did not cause or contribute to contamination on the property;

2. The real property owner was a distinct and separate entity from the owner and operator of the drycleaning facility, and did not have an ownership interest in or share in the profits of the drycleaning facility;

3. The real property owner did not participate in the operation or management of the drycleaning facility;

4. The real property owner complied with all discharge reporting requirements, and did not conceal any contamination; and

5. The department has not been denied access.

The defense provided by this paragraph does not apply to any liability under a federally delegated program.

(r) ~~(q)~~ A person whose property becomes contaminated due to geophysical or hydrologic reasons from the operation of a nearby drycleaning or wholesale supply facility and whose property has never been occupied by a business that utilized or stored drycleaning solvents or similar constituents is not subject to administrative or judicial action brought by or on behalf of another to compel the rehabilitation of or the payment of the costs for the rehabilitation of sites contaminated by drycleaning solvents, provided that the person:

1. Does not own and has never held an ownership interest in, or shared in the profits of, the drycleaning facility operated at the source location;

2. Did not participate in the operation or management of the drycleaning facility at the source location; and

3. Did not cause, contribute to, or exacerbate the release or threat of release of any hazardous substance through any act or omission.

The defense provided by this paragraph does not apply to any liability under a federally delegated program.

(s) ~~(r)~~ Nothing in this subsection precludes the department from considering information and documentation provided by private consultants, local government programs, federal agencies, or any individual which is relevant to an eligibility

determination if the department provides the applicant with reasonable access to the information and its origin.

Section 2. This act shall take effect upon becoming a law.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 1501 CS Agent Licensing
SPONSOR(S): Berfield
TIED BILLS: **IDEN./SIM. BILLS:** SB 2432

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) Agriculture Committee	9 Y, 0 N	Blanchette	Reese
2) Insurance Committee	18 Y, 0 N, w/CS	Freire	Cooper
3) State Resources Council		Blanchette	Hamby
4)			
5)			

SUMMARY ANALYSIS

Part I of Chapter 636, F.S., requires the Office of Insurance Regulation to license and regulate prepaid limited health service organizations (PLHSOs). While similar to health maintenance organizations, PLHSOs offer a narrower variety of services and no surgical hospital services or emergency services. Current law states "[w]ith respect to a prepaid limited health services contract, a person may not, unless licensed and appointed as a health insurance agent in accordance with the applicable provisions of the insurance code" solicit contracts or procure applications.

This bill provides that a person registered as a seller of travel with the Department of Agriculture and Consumer Services may engage in the solicitation and sale of a prepaid limited health services contract that covers the cost of transportation by an air ambulance when that air ambulance service is licensed under Florida law. However, a contract for such coverage is subject to all applicable provisions of law pertaining to prepaid limited health service organizations.

This bill does not have a fiscal impact on state or local governments.

This bill is effective July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

This bill does not appear to implicate any of the House Principles.

B. EFFECT OF PROPOSED CHANGES:

Present Situation

Part I of Chapter 636, F.S., requires the Office of Insurance Regulation (OIR) to license and regulate prepaid limited health service organizations (PLHSOs). These organizations are similar to health maintenance organizations (HMOs), but are limited to providing the following services: ambulance, dental care, vision care, mental health, substance abuse, chiropractic care, podiatric care, and pharmaceutical services under s. 636.003(5), F.S. A PLHSO may not offer inpatient or surgical hospital services or emergency services, except as such services are incidental to a limited health service. PLHSO enrollees are under a prepayment arrangement (i.e., either a prepaid per capita sum or a prepaid aggregate fixed sum) and receive services from an exclusive panel of providers such as physicians, dentists, health providers or other persons or institutions which are licensed in Florida to deliver limited health services, as defined in s. 636.003(7), F.S.

According to representatives with the OIR, there are twenty-two authorized prepaid limited health service organizations which have received a certificate of authority to operate in Florida. Under s. 636.044, F.S., only licensed and appointed health insurance agents may sell PLHSO contracts. Officials with the Department of Financial Services (DFS) state that the agency licenses approximately 4,620 health or life, health and variable annuity agents which have been appointed to offer prepaid limited health service organization contracts. Although requirements vary by line of authority, general requirements for agent licensure include: being 18 years of age; submitting an application; paying required fees; satisfying pre-licensing examination requirements, when applicable; complying with requirements as to knowledge, experience, or instruction; and submitting fingerprints. Applicants for a resident agent license must be Florida residents. Once authorized, most lines of agents must take continuing education courses.[1]

As provided under s. 636.005, F.S., PLHSOs must be incorporated, and they may be either a for-profit or not-for-profit corporation. Such an organization may be incorporated in a state other than Florida, if it maintains a certificate of authority or license in that state to provide the same services which it intends to provide in Florida at the time it applies for a certificate of authority from the OIR. Section 636.006, F.S., prohibits PLHSOs from transacting any insurance business, other than that specified under the act or under their certificate of authority.

Sellers of Travel

Under Part XI of Chapter 559, F.S., the Department of Agriculture and Consumer Services (DACS) is responsible for registering "sellers of travel," which is any resident or nonresident who offers for sale, at wholesale or retail, prearranged travel or tour-guide services for individuals or groups.[2] Sellers of travel must annually register with the DACS, pay a fee of $300, and receive a certificate evidencing proof of registration. If the seller of travel offers vacation certificates, the seller must obtain a performance bond not to exceed $25,000.

[1] Chapter 626, F.S.
[2] Section 559.928, F.S.

Air Ambulance Services

Air ambulance services are regulated under Part III of Chapter 401, F.S., by the Department of Health (DOH). An "air ambulance" is any fixed-wing or rotary-wing aircraft used for transporting sick or injured persons requiring, or likely to require, medical attention during transport.[3] An "air ambulance service" is a publicly or privately owned service, licensed by the DOH, which operates air ambulances to transport persons requiring medical attention during transport.[4] To be licensed, an air ambulance service must apply to DOH, pay fees, meet specified standards and obtain insurance. To be permitted by the department, each transport vehicle is required to meet specified safety standards, have an appropriate communication system, and be furnished with essential medical supplies and equipment.

The United States Center for Disease Control and Prevention estimates that almost 50% of U.S. travelers heading to another country will experience some kind of health problem.[5] A large majority of U.S. insurance companies, HMOs, PPOs, and Medicare do not provide adequate travel medical insurance, nor do they provide the necessary emergency medical evacuation which includes air ambulance transportation.[6] International medical evacuation and air ambulance cost anywhere between $8,000 and $100,000 for a one-way flight.[7] Air ambulances, sometimes the only way to safely transport a patient, are "specially equipped aircraft designed for relocating patients from one facility to another with continuous medical monitoring to ensure their safety."[8]

Effect of the Bill

This bill provides that a person registered as a seller of travel under s. 559.928, F.S., may engage in the solicitation and sale of prepaid limited health service contracts covering the cost of transportation by an air ambulance when that air ambulance service is licensed under s. 401.251, F.S. However, the contract for such coverage is subject to all applicable provisions pertaining to prepaid limited health service organizations under Chapter 636, F.S.

This provision allows any travel agent, as opposed to a health insurance agent, to sell a prepaid limited health services contract to any person to cover the cost of transportation provided by an air ambulance service. An individual's own health insurance may cover the cost of such transportation as well.

C. SECTION DIRECTORY:

Section 1. Creates s. 636.044(5), F.S., to allow persons registered in accordance with s. 559.928, F.S., as a seller of travel, to engage in the solicitation and sale of prepaid limited health service contracts that cover the cost of transportation by an air ambulance when that air ambulance service is licensed under s. 401.251, F.S.

Section 2. This act takes effect July 1, 2006.

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[3] Section 401.23(3), F.S.
[4] Section 401.23(4), F.S.
[5] www.worldwidemedical.com.
[6] *Id.*
[7] www.medjets.com/hlthcr.htm.
[8] www.usairambulance.com/s-1/01.htm?usapn=8009481216.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: There may be an increase in the total amount of collected registration fees that are deposited by the Chief Financial Officer to the credit of the General Inspection Trust Fund of the Department of Agriculture and Consumer Services pursuant to s. 570.20, F.S.[9]

2. Expenditures:

   None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

   None.

2. Expenditures:

   None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

See "Fiscal Comments."

D. FISCAL COMMENTS:

Companies that provide air ambulance services will economically benefit by no longer being required to have travel agents licensed as health insurance agents in order to sell prepaid contracts for this service. Travel agents will also benefit by this change. An individual who purchases this product may be buying duplicate coverage as his or her own current health insurance may cover air ambulance transportation services.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

   This bill does not appear to require the counties or cities to take an action requiring the expenditure of funds, does not appear to reduce the authority that cities or counties have to raise revenues in the aggregate, and does not appear to reduce the percentage of a state tax shared with counties or municipalities.

3. Other:

   None.

B. RULE-MAKING AUTHORITY:

None.

[9] Registration fees shall be $300 per year per registrant according to s. 559.928(2), F.S.

C. DRAFTING ISSUES OR OTHER COMMENTS:

The Department of Agriculture and Consumer Services has expressed concern about possible limited recourse for consumers (who have purchased insurance that covers the cost of transportation by an air ambulance) should the seller of travel subsequently go out of business before paying for that service. However, consumers may have an action for a breach of contract.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On April 5, 2006, the Insurance Committee approved HB 1501 with one technical amendment. The amendment substituted the word "insurance" in the original bill with the term "prepaid limited health service contract."

This analysis has been updated to reflect the changes made by the Insurance Committee at its April 5, 2006 meeting.

CHAMBER ACTION

The Insurance Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to agent licensing; amending s. 636.044, F.S.; authorizing certain travel agents to solicit and sell air ambulance transportation prepaid limited health service contracts under certain circumstances; providing requirements; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (5) is added to section 636.044, Florida Statutes, to read:

636.044 Agent licensing.--

(5) Notwithstanding the provisions of this section, a person registered in accordance with part XI of chapter 559 as a seller of travel may engage in the solicitation and sale of prepaid limited health service contracts covering the cost of transportation by air ambulance, as defined in s. 401.23(4), that is provided by an air ambulance service licensed pursuant to s. 401.251. The prepaid limited health service contract

providing this coverage is subject to all applicable provisions of this chapter.

Section 2. This act shall take effect July 1, 2006.

CHAMBER ACTION

The Insurance Committee recommends the following:

Council/Committee Substitute

Remove the entire bill and insert:

A bill to be entitled

An act relating to agent licensing; amending s. 636.044, F.S.; authorizing certain travel agents to solicit and sell air ambulance transportation prepaid limited health service contracts under certain circumstances; providing requirements; providing an effective date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Subsection (5) is added to section 636.044, Florida Statutes, to read:

636.044 Agent licensing.--

(5) Notwithstanding the provisions of this section, a person registered in accordance with part XI of chapter 559 as a seller of travel may engage in the solicitation and sale of prepaid limited health service contracts covering the cost of transportation by air ambulance, as defined in s. 401.23(4), that is provided by an air ambulance service licensed pursuant to s. 401.251. The prepaid limited health service contract

providing this coverage is subject to all applicable provisions of this chapter.

Section 2. This act shall take effect July 1, 2006.

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 7245 PCB EDTB 06-05 Oil & Gas Drilling
SPONSOR(S): Economic Development, Trade & Banking Committee
TIED BILLS: **IDEN./SIM. BILLS:**

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
Orig. Comm.: Economic Development, Trade & Banking Committee	12 Y, 0 N	Carlson	Carlson
1) State Resources Council		Lotspeich RAL	Hamby JRH
2) Commerce Council			
3)			
4)			
5)			

SUMMARY ANALYSIS

The bill prohibits the exploration for and production of oil, gas and other petroleum products in sovereignty submerged lands and waterways over which the State of Florida has control, now or in the future. This will expand the current statutory prohibitions against drilling in the submerged lands within the state's jurisdiction to any submerged lands seaward of the state's jurisdictional boundaries in the Atlantic Ocean and the Gulf of Mexico over which the federal government may grant control to the state in the future.

The bill prohibits the state from permitting the exploration for, drilling and production of oil and gas in the Outer Continental Shelf, which includes those submerged lands seaward of the state's sovereignty submerged lands.

The bill also prohibits the state or a local government from approving any license, permit, activity or project that violates the provisions of the bill.

The bill requires the Department of Environmental Protection to file with the U.S. Department of Commerce within six months of the effective date of the bill an amended coastal zone management plan to include these prohibitions.

The bill has an effective date of July 1, 2006.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Limited Government – The bill asserts state government authority to prohibit oil or gas drilling and associated activities.

B. EFFECT OF PROPOSED CHANGES:

BACKGROUND

Offshore Drilling for Oil and Natural Gas

The Outer Continental Shelf

The Outer Continental Shelf (OCS) consists of the submerged lands, subsoil, and seabed, lying between the seaward extent of the States' jurisdiction and the seaward extent of Federal jurisdiction. The continental shelf is the gently sloping undersea plain between a continent and the deep ocean. The United States OCS has been divided into four leasing regions. They are the Gulf of Mexico OCS Region, the Atlantic OCS Region, the Pacific OCS Region, and the Alaska OCS Region. In 1953, Congress designated the Secretary of the Department of Interior to administer mineral exploration and development of the entire OCS through the Outer Continental Shelf Lands Act (OCSLA). The OCSLA was amended in 1978 directing the secretary to:[1]

- conserve the Nation's natural resources;
- develop natural gas and oil reserves in an orderly and timely manner;
- meet the energy needs of the country;
- protect the human, marine, and coastal environments; and
- receive a fair and equitable return on the resources of the OCS.

State jurisdiction over the OCS is defined as follows:

- Texas and the Gulf coast of Florida are extended 3 marine leagues (approximately 9 nautical miles) seaward from the shoreline.
- Louisiana is extended 3 imperial nautical miles (imperial nautical mile = 6080.2 feet) seaward from the shoreline.
- All other States' seaward limits are extended 3 nautical miles (approximately 3.3 statute miles) seaward from the shoreline.

Federal jurisdiction over the OCS is defined under accepted principles of international law. The seaward limit is defined as the farthest of 200 nautical miles seaward of the shoreline or, if the continental shelf can be shown to exceed 200 nautical miles, a distance not greater than a line 100 nautical miles from the 2,500-meter isobath or a line 350 nautical miles from the shoreline.[2]

The Outer Continental Shelf is a significant source of oil and gas for the nation's energy supply. The OCS supplies more than 25 percent of the country's natural gas production and more than 30 percent of total domestic oil production. The offshore areas of the United States contain the majority of future oil

[1] http://www.gomr.mms.gov/homepg/whoismms/whatsocs.html
[2] http://www.gomr.mms.gov/homepg/whoismms/whatsocs.html

and gas resources. It is estimated that 60 percent of the oil and 59 percent of the gas yet to be discovered in the United States are located on the OCS.[3]

The OCS Lands Act requires the Department of Interior (DOI) to prepare a 5-year program that specifies the size, timing and location of areas to be assessed for Federal offshore natural gas and oil leasing. It is the role of DOI to ensure that the U.S. government receives fair market value for acreage made available for leasing and that any oil and gas activities conserve resources, operate safely, and protect the environment. OCS oil and gas lease sales are held on an area-wide basis with annual sales in the Central and Western Gulf of Mexico with less frequent sales held in the Eastern Gulf of Mexico and offshore Alaska. The program operates along all the coasts of the United States - with oil and gas production occurring in the Gulf of Mexico, the Pacific, and Alaska.[4]

The Minerals Management Service

The Minerals Management Service (MMS), a bureau in the DOI, is the federal agency that manages the nation's natural gas, oil and other mineral resources on the OCS. The MMS also collects, accounts for and disburses more than $8 billion per year in revenues from federal offshore mineral leases. The MMS oversees two major programs: Offshore Minerals and Minerals Revenue Management. The Offshore Minerals program, which manages the mineral resources on the OCS, comprises three coastal regions: Alaska, the Pacific, and the Gulf of Mexico.[5]

The Gulf of Mexico OCS Region is made up of three planning areas along the Gulf Coast - the Western, Central, and Eastern Gulf of Mexico Planning Areas. These areas contain 43 million acres under lease. There are 3,911 offshore production platforms active in the search for natural gas and oil on the Gulf OCS. These production facilities contribute significantly to the nation's energy supply.[6]

Eastern Gulf of Mexico Planning Area[7]

The Eastern Gulf of Mexico Planning Area extends along the Gulf's northeastern coast for some 700 miles, from Baldwin County, Alabama, southward to the Florida Keys. The area encompasses approximately 76 million acres, with water depths ranging from approximately 30 feet to nearly 10,000 feet. The area extends for more than 300 miles seaward of the state/federal boundary (9 miles off the Florida coast).

Since the late 1980's, a limited amount of OCS activity has taken place in the Eastern Gulf of Mexico Planning Area because of administrative deferrals and annual congressional moratoria.

The MMS has estimated that between 6.95 and 9.22 trillion cubic feet of natural gas and 1.57 and 2.78 billion barrels of oil and condensate are contained in the Eastern Gulf of Mexico Planning Area. Drilling for natural gas and oil has been occurring in the Eastern Gulf of Mexico offshore Alabama and Florida for more than three decades. The first of 11 natural gas and oil lease sales held offshore Florida occurred in 1959 and resulted in the issuance of 23 leases. Additional lease sales have been held periodically in the Eastern Gulf from 1973 through 2003. Currently, there are 241 active leases in the Eastern Gulf of Mexico Planning Area.

Exploratory drilling started in the Eastern Gulf of Mexico in the mid-1970's with the drilling of Destin Dome Block 162, located 40 miles south of Panama City, Florida. After two years of drilling and 15 dry holes, exploration stopped. To date, over 54 exploratory wells have been drilled in the Eastern Gulf of Mexico. Thirteen wells discovered natural gas, condensate, and crude oil.

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[3] http://www.mms.gov/offshore/
[4] http://www.mms.gov/offshore/
[5] http://www.mms.gov/aboutmms/
[6] http://www.gomr.mms.gov/homepg/offshore/gulfocs/gulfocs.html
[7] http://www.gomr.mms.gov/homepg/offshore/egom/eastern.html

Three Eastern Gulf lease sales were made in the 1980's and there was renewed industry interest in the Destin Dome area. In the late 1980's, Chevron U.S.A. and Gulfstar made natural gas discoveries in the area.

In October 1995, 73 oil and gas leases located *south* of 26° N. latitude (the approximate latitude of Naples, Florida) were returned to the federal government as part of a litigation settlement. Consequently, no active Federal natural gas and oil leases exist off southwest Florida. Likewise, no active leases exist in the Straits of Florida Planning Area or off Florida's east coast (South Atlantic Planning Area).

In 1996, a development plan was filed by Chevron U.S.A. and partners on the Destin Dome 56 Unit. On July 24, 2000, Chevron U.S.A. and partners filed a lawsuit against the U.S. government for denying the companies "timely and fair review" of plans and permits relating to the Destin Dome 56 Unit. In May 2002, the Department agreed to settle the litigation with the oil companies. The companies -- Chevron, Conoco and Murphy Oil -- relinquished seven of nine leases in the unit that were the subject of the litigation in exchange for $115 million. The remaining two leases, Destin Dome Blocks 56 and 57, are to be held by Murphy and will be suspended until at least 2012, under the terms of the agreement. Murphy agreed not to submit a development plan on the two remaining leases before 2012, the year when the current moratoria will expire. Under the terms of the agreement, the leases cannot be developed unless approved by both the federal government and the State of Florida.

Unocal began the first production in the Eastern Gulf Planning Area in mid-February 1999 on Pensacola Block 881. Located approximately 12 miles offshore Alabama, this site involves the production of some 5 million cubic feet of natural gas per day.

In October 1999, Gulfstream Natural Gas Systems (ANR) and Buccaneer Gas Pipeline Company (Transco/Williams) submitted pipeline right-of-way applications to the MMS for the construction of two 400-mile (36-inch) natural gas pipelines spanning the Eastern Gulf of Mexico. The Gulfstream right-of-way was approved by MMS on June 1, 2001. This line went into service in June 2002.

In November 1996, DOI released the OCS Oil and Gas Leasing Program (1997-2002). The program included 16 lease sales, with one sale proposed for the Eastern Gulf of Mexico in 2001. The original sale area was reviewed to be consistent with the State of Florida's opposition to offshore oil and gas activities within 100 miles of its coast. The first steps in the 3-year planning process began on January 25, 1999, with the release of the Call for Interest and Information and the Notice of Intent to Prepare an Environmental Impact Statement (EIS). A draft environmental impact statement was released in December 2000 and a final EIS was made available to the public in July 2001.

In July 2001, Sale 181 was adjusted from 5.9 million acres to about 1.5 million acres or 256 blocks. The adjusted area lies more than 100 miles off the Alabama/Florida State line. Twenty-three blocks in this area were under lease at that time. Lease Sale 181 was held on December 5, 2001. The MMS awarded leases on 95 tracts involving $340,474,113. Seventeen companies participated in this sale.

On December 10, 2003, Eastern Gulf of Mexico Sale 189 was held. Six companies participated in the lease sale that offered 138 blocks comprising approximately 794,880 acres offshore Alabama. The highest bid received was $2.2 million, submitted by Shell and Nexen.

In an August 22, 2005, Department of Interior news release, it was announced that the MMS was seeking initial public comment on the development of its 2007-2012 five-year leasing plan for energy development on the OCS and accompanying environmental impact statement.[8] This includes the Eastern Gulf of Mexico Planning Area. The announcement stated:

[8] http://www.doi.gov/news/05_News_Releases/050822.htm

"The announcement is the first step in a two-year process to develop the leasing plan. It does not include proposals for new lease sales but instead asks the public for general information and comment not only on energy development but also on other economic and environmental issues in the OCS areas.

'The Outer Continental Shelf contains billions of barrels of oil and trillions of cubic feet of natural gas that can be safely produced,' Interior Secretary Gale Norton said. 'With our reliance on imports of foreign oil climbing each year, we would be irresponsible if we did not consider how we might develop these abundant domestic resources.'

Presidential withdrawals or congressional moratoria have placed more than 85 percent of the OCS off the lower 48 states off limits to energy development.

The Bush Administration has repeatedly expressed its support for the existing moratoria, based upon deference to the wishes of the states to determine what activities take place off their coasts.

However, recent energy legislation passed by Congress calls for a comprehensive inventory and analysis of the oil and natural gas resources for all areas of the OCS.

Therefore, as MMS undertakes the process of drafting its proposal, the agency is seeking comment on the potential resources available in all areas of the OCS, recognizing that many of these areas are subject to existing moratoria and will not be fully analyzed for possible leasing. In seeking public comment, Secretary Norton reaffirmed the Bush Administration's pledge not to conduct any new leasing under the 2007-2012 five-year plan within 100 miles of Florida's coast, in the Eastern Gulf of Mexico Planning Area. MMS is also asking the public to comment specifically on whether the existing withdrawals or moratoria should be modified or expanded to include other areas in the OCS; and whether the Interior Department should work with Congress to develop gas-only leases.

The 2007-2012 OCS oil and gas leasing program will be the seventh program prepared since Congress passed the OCS Lands Act in 1978. The Act requires the Secretary of the Interior to prepare and maintain five-year programs for offshore oil and natural gas leasing. The current program runs through June 30, 2007.

Once public comment is received, MMS will develop a draft proposed program followed by a proposed program and draft EIS. The public will have an opportunity to comment on both documents.

The following is the schedule for the 2007-2012 five-year program:"

Date	Step
August 24, 2005	Solicit comments and information (Federal Register Notice)
Winter 2005	Issue draft proposed program (60-day comment period)
Summer 2006	Issue proposed program and draft EIS (90-day comment period)
Winter 2007	Issue proposed final program and final EIS (60-day waiting period)
Spring 2007	Approve five-year program for July 2007-July 2012

The Exploration and Development Process

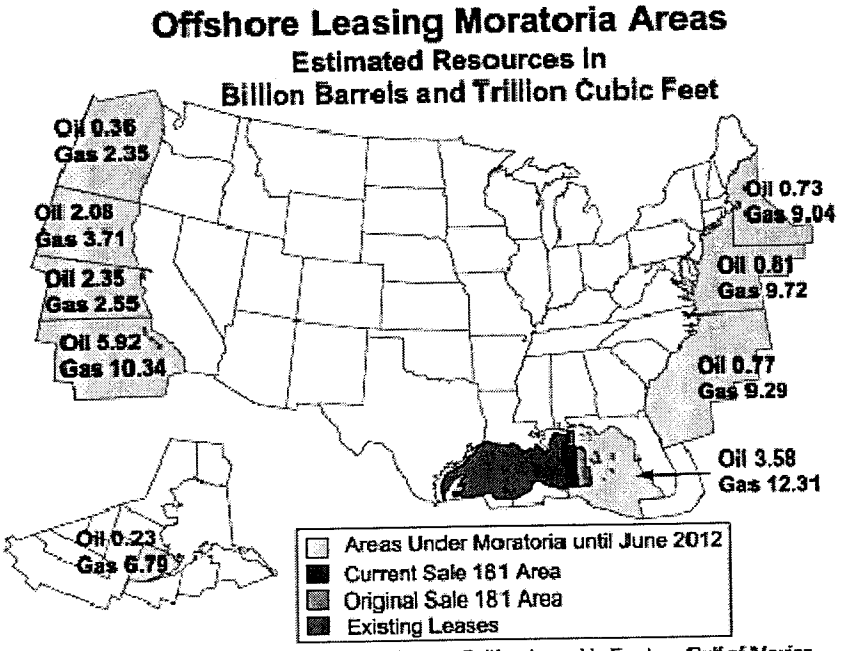
Once a company acquires a lease, the company has to prepare an exploration plan and have it approved by the MMS and other federal and state agencies in order to drill a well. Typical exploration plans propose the drilling of one or more exploratory wells. The MMS conducts an environmental review of the impacts of drilling the well. Should a discovery be made, the company may then prepare and file a development plan. The exploration and development plans must be consistent with the affected state's Coastal Zone Management Plan

During exploratory drilling or production operations on the OCS, the MMS inspection program calls for MMS inspectors to review operations and periodically visit and inspect facilities to ensure clean and environmentally safe operations.

To prepare for lease sales and to protect the environment during offshore drilling operations, the MMS conducts environmental studies. Several new studies are planned and/or currently underway.[9]

Federal Moratoria

Congress and past Presidents have placed moratoria on offshore drilling and development on the OCS on both the U.S. East and West Coasts. Included in the moratoria is the Eastern Gulf of Mexico. The consequence of the moratoria is to foreclose, until at least 2012, any effort to explore for critical oil and gas resources that are estimated to lie beneath these areas. In response to recent sharp increases in fuel and home heating oil, several attempts have been made in Congress to limit or remove these moratoria. The map below illustrates these moratoria areas.[10]



Note: Locations of existing leases offshore California and in Eastern Gulf of Mexico are approximate and intended to be representative only.

Source: Minerals Management Service

[9] http://www.gomr.mms.gov/homepg/offshore/egom/eastern.html
[10] http://api-ep.api.org/issues/index.cfm

Current State Law

Under the provisions of Chapter 253, F.S., the Governor and Cabinet sitting as the Trustees of the Internal Improvement Trust Fund have been granted the powers and duties with regard to the control of private uses of "sovereignty submerged lands." Sovereignty submerged lands are those lands including but not limited to, tidal lands, islands, sand bars, shallow banks, and lands waterward of the ordinary or mean high water line, beneath navigable fresh water or beneath tidally-influenced waters, to which the State of Florida acquired title on March 3, 1845, by virtue of statehood, and which have not been heretofore conveyed or alienated.[11] These submerged lands are owned by the State of Florida.

The United States Supreme Court held that the Submerged Lands Act granted to Florida "a three-marine-league belt of submerged land under the Gulf of Mexico seaward from its coastline." "Three marine leagues" are defined as "nine marine, nautical, or geographic miles, or approximately 10 ½ land, statute or English miles."[12] Accordingly, these state-owned submerged lands extend waterward from the shoreline for approximately 9 miles into the Gulf of Mexico and 3 miles into Atlantic Ocean.[13]

Section 253.61, F.S., expressly prohibits the Trustees from granting any "oil or natural gas *lease*" on state-owned submerged lands off the State's west coast.

Part I of Chapter 377, F.S., provides for the regulation of the oil and gas resources in the state. Section 377.24, F.S., sets forth the parameters for the issuance of *permits* by the Department of Environmental Protection for drilling wells for oil and natural gas. Section 377.24, F.S., prohibits the DEP from issuing permits for certain types of wells. Specifically listed in these prohibitions is any "well in search of oil or gas" on state-owned submerged lands.[14]

Coastal Zone Management

Federal Coastal Zone Management Act

In order to attempt to resolve increasing conflicts over limited coastal resources, in 1972, the U.S. Congress passed the Coastal Zone Management Act (CZMA).[15] The CZMA sought to preserve, protect, develop, and where possible, to restore and enhance the resources of the nation's coastal zone. It encouraged coastal states to develop and implement comprehensive management programs which balance the need for coastal resource protection with the need for economic growth and development within the coastal zone.

If the management program developed by the coastal states receives the approval of the U.S. Department of Commerce National Oceanic and Atmospheric Administration (NOAA), the state is empowered by the CZMA and its implementing regulations to review federal activities within or adjacent to its coastal zone to determine whether the activity complies with the requirements of the state's approved management program.

Federal Consistency

The authority of a state to review federal activities to determine their compliance with the state's approved management program is referred to as "federal consistency." The federal consistency process allows states to review the following activities for compliance with the requirements of their approved management program:

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[11] See Rule 18-21.900, Florida Administrative Code.
[12] *U.S. v. Fla.*, 363 U.S. 121 (1960).
[13] Section 1, Article II, Florida Constitution.
[14] Subsection 377.24(9), F.S.
[15] 16 U.S.C. ss. 1451-1464

- Activities conducted by or on behalf of a federal government agency;
- Federally funded activities;
- Activities which require a federal license or permit; and
- Activities conducted pursuant to an Outer Continental Shelf Lands Act minerals exploration plan or lease.

If a state with an approved management program determines that a proposed federal activity is "inconsistent" (fails to comply) with the requirements of the state's approved program, the applicant/federal agency is prohibited from conducting the activity. If the applicant/federal agency appeals or requests mediation from the U.S. Department of Commerce, the final determination is made by the Secretary of the U.S. Department of Commerce.

Consistency in Florida

In 1978, the Florida Legislature passed the Florida Coastal Management Act. The Act sets forth legislative intent with regard to Florida's coastal management program, defines Florida's "coastal zone," and sets forth the parameters for determining federal consistency. The Florida Coastal Management Act is found in Part II of Chapter 380, F.S.

The Florida Coastal Management Program (FCMP) was approved by NOAA in 1981. The FCMP consists of a network of 23 chapters of Florida Statutes administered by eleven state agencies and four water management districts. The FCMP is designed to: (1) ensure the wise use and protection of the state's water, cultural, historic, and biological resources; (2) minimize the state's vulnerability to coastal hazards; (3) ensure compliance with the state's growth management laws; (4) protect the state's transportation system; and (5) protect the state's proprietary interest as the owner of sovereign submerged lands.[16] The Act currently gives to the Florida Department of Environmental Protection the authority to maintain and update the FCMP.[17] Any updates to the FCMP must be submitted by DEP to NOAA for approval.[18]

The Legislature has chosen to limit Florida's federal consistency review to the federal licenses or permits specified in paragraph 380.23(3), F.S. On this list are permits and licenses for activities that are proposed *seaward* of the state's jurisdiction, including:

- Permits and licenses required under the OCS Lands Act for drilling, mining, pipelines, on public lands and
- Permits and licenses for areas leased under the OCS Lands Act, including leases and approvals of exploration, development, and production plans.[19]

In those instances where a state permit is also required for the activity, the consistency of federally permitted actions is determined by the issuance or denial of the state permit.[20]

Federal agencies, and applicants seeking federal licenses and permits (or federal financial assistance), are required by the CZMA to provide the state with the information needed to determine whether federal actions conducted in or adjacent to the state impact the resources of state's coastal zone, and whether impacts to the state's coastal resources are consistent with the enforceable policies contained in the FCMP. The Florida State Clearinghouse, located within the DEP, serves as the single point of

[16] http://www.dep.state.fl.us/cmp/federal/index.htm
[17] s. 380.22, F.S.
[18] 16 U.S.C. ss. 1451 et seq.
[19] Subparagraphs 380.23(3)(c)7 and 8, F.S.
[20] Subsection 380.23(1), F.S.

contact for the receipt of documents which require federal consistency review. During the review, each FCMP agency ensures that the federal activities comply with the requirements of the FCMP statutes and authorities within its jurisdiction. Recommendations regarding the activities' consistency with the FCMP are provided by the agencies to the DEP, which makes the final consistency determination, and provides that determination to the federal agency/applicant.[21]

The Governor's Office of Planning and Budgeting (OPB) supports the management of the FCMP by providing conflict mediation and resolution services. OPB also supports the program by coordinating the state's consistency review of OCS Lands Act minerals exploration plans and leases.[22]

EFFECT OF PROPOSED CHANGES

Ban on Drilling in Sovereignty Submerged Lands

The bill creates a new Section 377.061, F.S., to reiterate current law to prohibit the exploration for and production of oil and gas in sovereignty submerged lands and waterways. The bill expands the current prohibition to include submerged lands and waterways over which the state "has control, now or in the future." This will apply the prohibition not only to the submerged lands three miles into the Atlantic Ocean and approximately nine miles into the Gulf of Mexico, but to any submerged lands seaward of those jurisdictional boundaries over which the federal government may grant control to the state in the future.

Ban on Energy Activities in the Outer Continental Shelf

The bill prohibits the state from permitting any Outer Continental Shelf energy activities, as those activities are defined by the Coastal Zone Management Act. The Act defines the term "Outer Continental Shelf energy activity" to mean the exploration for, or any development or production of, oil or natural gas in the Outer Continental Shelf, or the siting, construction, expansion, or operation of any new or expanded energy facilities directly required by such exploration, development or production.[23]

The term "outer continental shelf" is defined to mean those submerged lands seaward and outside of the area of lands beneath the navigable waters within the state's jurisdiction.[24] This prohibition will therefore apply in those submerged lands seaward of the state's sovereignty submerged lands.

Prohibition on Permits for Infrastructure

The bill also prohibits the state or a local government from approving any license, permit, activity or project that violates the provisions of the bill. This provision is intended to prevent the state or a local government from permitting activities associated with the infrastructure supporting offshore oil or gas drilling.

Amendment of Coastal Zone Management Plan

The bill requires the Department of Environmental Protection to file with the U.S. Department of Commerce within six months of the effective date of the bill an amended coastal zone management plan to include these prohibitions.

C. SECTION DIRECTORY:

Section 1. Creates s. 377.061, F.S., relating to the prohibition on oil and gas drilling.
Section 2. Requires the Department of Environmental Protection to submit an amendment to the Florida coastal management program
Section 3. Provides an effective date of July 1, 2006.

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[21] http://www.dep.state.fl.us/cmp/federal/index.htm
[22] Id.
[23] 16 U.S.C. s. 1453(13).
[24] See 43 U.S.C. ss. 1301 and 1331.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues: None.

2. Expenditures: None.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues: None.

2. Expenditures: None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

The bill will have a negative impact on private entities in Florida who seek to engage in oil or gas drilling activities in the sovereign submerged lands of the state. The actual impact on the private sector is unknown.

D. FISCAL COMMENTS: None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

The bill does not require counties or municipalities to spend funds or to take an action requiring the expenditure of funds. This bill does not reduce the percentage of a state tax shared with counties or municipalities. This bill does not reduce the authority that municipalities have to raise revenue.

2. Other: None.

B. RULE-MAKING AUTHORITY: None.

C. DRAFTING ISSUES OR OTHER COMMENTS: None.

IV. AMENDMENTS/COMMITTEE SUBSTITUTE & COMBINED BILL CHANGES

On March 30, 2006, the Economic Development, Trade and Banking Committee adopted a strike-all amendment to the bill. The amendment provides the following:

- Provides that it is the policy of Florida that the exploration for and production of oil, gas and other petroleum products in sovereignty submerged lands and waterways over which the State of Florida has control, now or in the future, be prohibited.
- Bans the exploration for, drilling and production of oil and gas in the Outer Continental Shelf, which includes those submerged lands seaward of the state's sovereignty submerged lands.
- Requires the Department of Environmental Protection to file an amended coastal zone management plan with the United States Department of Commerce to include these prohibitions within six months of the effective date of the bill.

- Prohibits the state or a local government from approving any license, permit, activity or project that violates the provisions of the bill.

- Provides a series of "whereas" clauses regarding the value of the ocean and tourism economies, the effects of oil and gas drilling on the natural environment and the state's interest in protecting the citizens, economy and environment.

This analysis has been revised to reflect the strike-all amendment.

A bill to be entitled

An act relating to oil and gas drilling; creating s. 377.061, F.S.; prohibiting activities associated with the exploration for and production of oil, gas, or other petroleum products in sovereignty submerged lands and waterways; prohibiting Outer Continental Shelf energy activities; prohibiting local governments and state agencies from granting approval for certain licenses, permits, activities, and projects; requiring the Department of Environmental Protection to submit such provisions to the United States Department of Commerce to be made part of the state's coastal zone management program; providing an effective date.

WHEREAS, the State of Florida is comprised of 2,276 miles of tidal shoreline, 8,426 miles of detailed tidal shoreline, and

WHEREAS, sand beaches comprise 1,350 miles of coastline, and

WHEREAS, in 2004, 13 million state residents lived along the coastline, and

WHEREAS, the tourism industry attracted 79.7 million tourists to Florida, who spent $57 billion in the state and generated $3.4 billion of tax revenues in 2004, and

WHEREAS, tourists are attracted to Florida by virtue of the pristine beaches, waterways, and coastal recreational activities, and

WHEREAS, saltwater fishing contributed $5.8 billion and 59,418 jobs to Florida in 2005, and

WHEREAS, the commercial fishing industry generated an estimated $562 million of revenue and provided 9,787 jobs to Florida in 2005, and

WHEREAS, Florida has more seafood processing plants than any other state and the seafood processing industry shipped $614 million worth of products and provided 3,108 jobs statewide in 2005, and

WHEREAS, Florida fishers catch more than 90 percent of the nation's supply of grouper, pompano, mullet, stone crab, pink shrimp, spiny lobsters, and Spanish mackerel, and

WHEREAS, the value of Florida aquaculture sales ranks third in the nation and reached $95.5 million in 2003, and

WHEREAS, the total economic impact of Florida's seafood harvest is more than $1 billion annually, and creates more than 20,000 full-time and 10,000 part-time jobs, and

WHEREAS, the coral reef in Key West is the third largest in the world and the largest in North America, and

WHEREAS, oil and gas drilling would potentially damage or destroy living bottom communities, beaches, coastal barrier islands, wetlands, seagrass beds, mangroves, corals, and animal life, and

WHEREAS, such damage would result from pipeline placement, increased barge and tanker traffic, construction of supporting facilities, discharge of trash and debris, and rig construction and removal, and

WHEREAS, the release of hydrocarbons, chrome, lead, barium, cadmium, copper, antimony, arsenic, mercury, and other toxic chemicals would result from the discharge of drilling muds,

production waters, and oil or gas, and

WHEREAS, the chemicals released into the environment from these discharges are virtually nonrecoverable and are extremely toxic, and

WHEREAS, the Legislature declares that the state has a vital interest and responsibility to protect its citizens, coastal areas, natural wildlife, and economy, and

WHEREAS, the Legislature further declares that the possibility for spillage of oil or other pollutants as a result of the activities associated with the exploration and production of oil, gas, or other petroleum products in certain lands and waters surrounding the state constitutes a grave threat to the health and welfare of the state's citizens, coastal areas, natural wildlife, and economy, and

WHEREAS, the Legislature finds that despite safeguards that could be imposed on the activities associated with the exploration and production of oil, gas, or other petroleum products from certain lands and waters surrounding the state, the potential serious harm caused by these activities cannot be eliminated, and

WHEREAS, the possibility of an oil spill cannot be eliminated and pollution from an oil spill would be catastrophic to the citizens, coastal areas, natural wildlife, and economy of this state, NOW, THEREFORE,

Be It Enacted by the Legislature of the State of Florida:

Section 1. Section 377.061, Florida Statutes, is created

to read:

377.061 Prohibition of exploration for and production of oil, gas, or other petroleum products.--

(1) The exploration for and production of oil, gas, or other petroleum products in the sovereignty submerged lands and waterways over which the state has jurisdiction or control, now or in the future, is prohibited.

(2) No Outer Continental Shelf energy activity, as defined under s. 1453 of the Coastal Zone Management Act of 1972, as amended, shall be permitted by this state.

(3) No state agency or local government shall approve any license, permit, activity, or project that violates this section.

Section 2. Prior to October 1, 2007, the provisions of this act shall be submitted by the Florida Department of Environmental Protection to the United States Department of Commerce pursuant to the Coastal Zone Management Act of 1972, as amended, to be made part of the state's coastal zone management program under chapter 380, Florida Statutes.

Section 3. This act shall take effect July 1, 2006.